1936

SPECIAL CONTRACT FOR PRIVATE STORAGE OF GRAIN AND OR SEED

VESSEL STR. GEORGE H. INGALLS

IT IS HEREBY AGREED in consideration of the sum of as Agreed

that a cargo of grain shall be stored on the vessel, Str. GEORGE H. INGALLS from on or abo

30th day of November, 19 39; to on or about the 1st day of April

at the port of Cleveland, Ohio. or as near thereto as the vessel by the exercise of due diligence

safely navigate.

1. It is understood and agreed that the vessel is to be considered as a vessel and not a warehouse throughout the storage pe
It is further understood and agreed that the shipowner is not engaged in the business of warehousing grain or any other commo
and does not hold itself out generally as engaged in the business of storing grain for profit, and hereby assumes no obligation in re
to inspecting, ventilating, or conditioning cargo during the storage period referred to in this contract. If the shipowner receives
information indicating that the grain is, or is likely to be damaged, it shall be its obligation to report this information promptly t
shipper.

2. The shipowner does not warrant the fitness of the vessel or its appliances for the storage of grain, but does warrent to
due diligence to furnish a seaworthy vessel as a bulk carrier of grain for the storage period. The shipowner shall not be liable for
or damage due to any defect, latent or otherwise, in the vessel or its appliances if at the time of loading the grain it shall have exer
due diligence to furnish a seaworthy vessel as a bulk carrier of grain.

3. The shipowner shall not be liable for loss or damage to the grain whensoever and howsoever occurring not due to its
gence or the negligence of its servants and employees.

4. Notwithstanding the provisions of the foregoing paragraphs the shipowner in any event shall not be liable for any
damage to the grain by collisions, perils of the sea, or fault or error in navigation of the vessel; or by fire unless the fire is cau
the neglect or design of the shipowner.

5. The burden of proving that any damage was not due to inherent vice shall be on the grain owner.

6. In the event of accident, danger, damage, or disaster during the storage, resulting from any cause whatsoever, even if
negligence, for which, or for the consequences of which, the shipowner is not responsible by statute or contract or otherwise, the shi
consignees or owners of the cargo shall contribute with the shipowner as in general average to the payment of any sacrifices, lo
expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in resp
the cargo.

BOLAND & CONKLIN, Agents

By H. F. Hubbard
Shipowner

Grain Owner

Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from strikes or lockouts or stoppage or restraint of labor from whatever cause whether occurring aboard the ship or elsewhere, nor will the carrier make claim against the shipper, consignee, or cargo for detention of the ship caused by the aforesaid labor disturbances.

Copy—Not Negotiable

Consisting of One Hundred Sixty Thousand (160,000) Bushels No. 1 Flax, 17½ Dockage.

Freight from Duluth-Superior, to Cleveland, Ohio being as agreed cents per bushel of Fifty-six (56) pounds.

Grain loaded all over.

It is understood and agreed that the above rate of freight includes winter storage in vessel at destination until April 1st 1940. All but one-half cent per bushel freight payable upon arrival of vessel at destination, balance as cargo is unloaded.

It is understood and agreed that the vessel shall not be responsible for shortage exceeding one-half bushel per one thousand bushels carried. The vessel to deliver all Grain on board, collect Freight upon actual outturn and make no Claim for any overrun.

160000 Bus. 00 Lbs.

BOLAND & CONNELLUS, *Agents.*
By H. F. HUBBARD.

433 *Exhibit 31.*

Number .....

Lake Bill of Lading for Bulk Cargoes other than Grain and Seed

BUFFALO, N. Y., *Nov. 12, 1938.*

Shipped, in apparent good order and condition by Royster Guano Company as agents and forwarders, for account and risk of whom it may concern, on board the steamer called "Geo. H. Ingalls," whereof ..... is Master, now in the Port of Buffalo, N. Y., and bound for Toledo, Ohio, the following articles as herein marked and described, to be delivered in like good order and condition (the dangers of navigation, fire, spontaneous combustion, explosions and collisions excepted), as addressed in the margin, or to his or their assigns or consignees, only upon payment of the freight and charges noted below. The shipment is subject to the following terms and conditions:

1. The carrier shall not be liable for any claim whatsoever, howsoever and howsoever occurring, arising from compliance

by the carrier with any directions whatsoever by any government or by any person purporting to act under authority thereof; or resulting from fault or error in the management or navigation of the vessel; or unseaworthiness or latent or other defect in any part of the hull, boilers, machinery, or appurtenances of the vessel, even though existing at the time of loading or at the beginning of the voyage, provided the carrier shall have exercised due diligence to make the vessel seaworthy with respect to the matters or things producing the loss, damage or delay.

2. In the event of accident, danger, damage or disaster before or after commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the shipowner is not responsible by statute or contract or otherwise, the shippers, consignees or owners of the cargo shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the cargo.

3. With liberty either before or after proceeding towards the port of discharge, to proceed, to, and/or stay at, any ports or places whatsoever (although in a contrary direction to, or out of, or beyond, the route to the said port of discharge) once or oftener, in any order, backwards or forwards, for the purpose of drydocking (even with cargo on board), or loading or discharging cargo or passengers, or for any purpose whatsoever. Nothing in this Bill of Lading, whether written or printed, or implied therefrom, shall limit or affect the provisions of this clause.

4. Permission is granted vessel to deviate to load, transport and unload automobiles and other goods and/or merchandise on deck.

5. Permission given to tow and to be towed.

In witness whereof, the Master or authorized officer of vessel or agents hath affirmed to Six Bills of Lading of this tenor and date; one of which being accomplished, the others to stand void.

Consignee and destination, Royster Guano Co., Toledo, Ohio; description, 2,800 Gross Tons Phosphate Rock. Ex. Barges "Katie Feeney," "John D. Ross," "Marion Ryan," "American Aviator."

Lake Freight as agreed per net ton. Payable as agreed. For'd Aft.

BOLAND & CORNELIUS, *Agents.*
By R. O. B.

434 *Exhibit 32*

Number 4
Number _____
September 24, 1938.

Shipped, in apparent good order and condition, by The M. A. Hanna Company as agents and forwarders, for account and risk of whom it may concern, on board the Vessel called "Ingalls," whereof _____ is Master, now in the Port of Sandusky, Ohio and bound for Hubbell, Mich., the following articles as herein marked and described, to be delivered in like good order and condition (the dangers of navigation, fire, spontaneous combustion, explosions and collisions excepted), as addressed in the margin, or to his or their assigns or consignees, only upon payment of the freight and charges noted below. The shipment is subject to the following terms and conditions:

1. The carrier shall not be liable for any claim whatsoever, whensoever and howsoever occurring, arising from compliance by the carrier with any directions whatsoever by any government or by any person purporting to act under authority thereof; or resulting from fault or error in the management or navigation of the vessel; or unseaworthiness or latent or other defect in any part of the hull, boilers, machinery, or appurtenances of the vessel, even though existing at the time of loading or at the beginning of the voyage, provided the carrier shall have exercised due diligence to make the vessel seaworthy with respect to the matters or things producing the loss, damage or delay.

2. In the event of accident, danger, damage or disaster before or after commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the shipowner is not responsible, by statute or contract or otherwise, the shippers, consignees or owners of the cargo shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the cargo.

3. With liberty either before or after proceeding towards the port of discharge, to proceed to, and/or stay at, any ports or places whatsoever (although in a contrary direction to, or out of, or beyond, the route to the said port of discharge) once or oftener, in any order, backwards or forwards, for the purpose of drydocking (even with cargo on board), or loading or discharging cargo or passengers, or for any purpose whatsoever. Nothing in this Bill of Lading, whether written or printed, or implied therefrom, shall limit or affect the provisions of this clause.

Permission given to tow and to be towed.

In Witness Whereof, the Master or authorized officer of vessel or agents hath affirmed to 7 Bills of Lading of this tenor and date; one of which being accomplished, the others to stand void.

Consignee and Destination, Calumet & Hecla Consolidated Copper Co., Hubbell, Michigan; Description, 5,010.10 tons Chilton 2" Lump Coal. Insured.

Permission is granted vessel to deviate to load and unload automobiles and other goods and/or merchandise on deck.

Lake Freight 45¢ per net ton. Payable by_____
At Cleveland, O. For'd 14 Aft 17–3.

AUTOMOTIVE TRADES STEAMSHIP CO.,
By BOLAND & CORNELIUS, *Agents*,
Terminal Tower Bldg., Cleveland, Ohio.

THE M. A. HANNA CO., LAKE COAL DEPT.,
E. F. SAUER.

435 Before the Interstate Commerce Commission

W–592

T. J. MCCARTHY STEAMSHIP COMPANY, APPLICATION TO OPERATE AS A COMMON CARRIER BY WATER

W–729

AUTOMOTIVE TRADES STEAMSHIP COMPANY, APPLICATION TO OPERATE AS A COMMON CARRIER BY WATER

HEARING ROOM "B," WASHINGTON, D. C.,
Friday, October 30, 1942.

The above-entitled matters came on for oral argument before Division 4 at 10:00 o'clock, a. m.

Present: Commissioners PORTER (presiding), MAHAFFIE, and MILLER.

Appearances: Sparkman D. Foster, 3666 Penobscot Building, Detroit, Michigan, appearing for applicants. S. S. Eisen, 140 Cedar St., New York City, appearing for Nicholson Universal Steamship Company and Detroit and Cleveland Navigation Company.

437 PROCEEDINGS

Commissioner PORTER. The Commission by Division 4 will hear argument in Water Carrier case No. 592, and in Water Carrier case No. 729.

Mr. Foster.

Mr. FOSTER. I wish to apologize for not asking for time.

Commissioner PORTER. This is your second offense?

Mr. FOSTER. Yes. I did the same thing in the other case. It will not happen again.

Commissioner PORTER. All right. Mr. Foster, you have the opening.

Argument of Mr. Sparkman D. Foster on behalf of the applicants

Mr. FOSTER. If the Commissioners please, I will review just as briefly as I can the history of these two companies.

Mr. McCarthy started out as soliciting agent for the Detroit and Cleveland Navigation Company, back in 1933. In 1935 the arrangement was switched over to where the T. J. McCarthy Steamship Company was the soliciting agent. There was an agreement made with the Detroit and Cleveland Navigation Company after they had put on the one vessel, the Fitch. Any additional ships which Mr. McCarthy's solicitation required could be put on by Mr. McCarthy.

438 When this Act went into effect in 1940, they were under charter to the Detroit and Cleveland Navigation Company. However, during all the period, certain expenses were paid by the T. J. McCarthy Steamship Company and Automotive Steamship Company. The application was filed on the basis that Mr. McArthy did have grandfather rights, that part of these expenses were paid by him and that his vessels were operated over these routes in the transportation of automobiles.

Subsequently, an amended application was filed on the basis of public convenience and necessity. The automobile business dropped off, back when they quit manufacturing automobiles, last fall. By mutual agreement, early in February the arrangement not only as to the soliciting arrangement was mutually cancelled, but the charters which had been exercised, the options which had been exercised for two of these vessels, for 1942 they were also by mutual agreement terminated.

When the hearing came on, the prospect then for any appreciable movement of automobiles during 1942 was very bad. However, the leading shippers of automobiles, the traffic managers of the large automobile companies, who ship perhaps 85 per cent of the automobiles out of Detroit and who were thoroughly familiar with the entire situation, all testified that in their judgment that upon resumption of normal operation that these three ships
439 would be vitally needed to serve the public.

As a matter of fact, with automobile production limited almost exclusively to units for the army and armed serivces, Mr.

McArthy was approached this spring and asked to transport automobiles to Buffalo for the army. Since that time he has been transporting automobiles, with the limited number there were, there were not the facilities to handle the volume which needed to be handled.

We feel very much as the Examiner's proposed report says, this company went out, these two companies went out and spent their own money, because one of the protestants in the hearing today, the Detroit and Cleveland Navigation Company, simply said they would not spend any additional money to put on automobile vessels. When Mr. McArthy first went with that company, the only space which they had was the unused space on their passenger vessels between Detroit and Cleveland. If there was any space left over after the tourists were taken care of, they handled new automobiles. The first season he went with them it was necessary for them to put on automobiles. They worked out a joint partnership arrangement of the expenses and losses of the first automobile boat put on. Later they purchased one vessel, the steamer Fitch. Later they said they were not going to purchase any boats to handle automobile traffic. They later purchased the George G. Meade. Later they purchased the
440 Tremaine, now the T. J. McArthy. She was continued in that traffic from 1936 on. In 1938, 1939 and 1940, the Steamer Ingalls carried automobiles. The actual automobiles carried in 1939, 1940 and 1941, the Steamer Meade transported 19,000 cars; 20,000 in 1940, and 24,000 in 1941. The Tremaine transported 24,000 in 1939; 32,000 in 1940 and 32,000 in 1941. The Ingalls transported 24,000 cars in 1940 and 29,239 in 1941. We feel while we are not urging the application now on the basis of grandfather rights, we do feel that public convenience and necessity will require the use of these vessels upon the resumption of production of automobiles.

Commissioner PORTER. The proposed report recommends on the basis of convenience and necessity, does it not?

Mr. FOSTER. Yes.

Commissioner MAHAFFIE. Are you handling exclusively for the armed services now?

Mr. FOSTER. Yes.

Commissioner MAHAFFIE. On that tariff as a common carrier or what is the arrangement?

Mr. FOSTER. It is on the regular tariff, yes the regular tariff. We might say that in the whole situation on vessels on the
Lakes, it was radically changed commencing with last win-
441 ter. The War Production Board issued a directive to the O. D. T. to bring down 89,500,000 tons of iron ore. All of the vessels previously engaged in the transportation of auto-

mobiles are now engaged either in the transportation of iron ore, or of grain. The applicant's three vessels here have had their elevators taken out of them. They have had the main planking and support of the between decks taken out of them so they can handle grain. The automobiles, the motor vehicles which are presently being handled by both applicants are handled along with grain. The vessels haul grain to the head of the lakes, stop by Detroit and load these motor vehicles on the spare top deck. I don't believe this year, with the exception of very few cars, that any of the carriers have transported other than for the armed forces. There might have been a very small movement of cars that were stationed at some particular place, might have moved back. I will say 99 percent of the cars which have been moved were motor vehicles for the armed services.

The testimony just cannot help but lead to the conclusion that the Examiner outlined in his proposed report. The protestant, the Detroit and Cleveland Navigation Company, when they saw this traffic was going to drop off, they did ask that the whole arrangement be cancelled. Mr. McCarthy's solicitation agreement had two more years to run. That was on the percentage basis. They had the right to exercise options for two addi-
442 tional years on two of the vessels. That has been mutually cancelled, and the McCarthy Steamship Company and the Automotive Steamship Company are now free to serve the public without any contract obligations to anyone.

The Company has no funded debt and as of September 30, 1941, the McCarthy Steamship Company and the Automotive Steamship Company respectively had total assets of $111,000 and 134,000 and liabilities of $79,000 and $30,000. In 1941 these companies had gross operating revenues of $76,000 and of $28,000, and represented a capital investment of $246,000.

I certainly don't believe it would be in the public interest to say to these two applicants who have invested their own money to serve this particular trade, that they just no longer were going to be permitted to operate. Mr. McCarthy has been in the automotive transportation for the past twenty years. The Detroit and Cleveland Navigation Company, until the time he went with them, was primarily a passenger and package freight line, handling very few automobiles.

Commissioner MILLER. Do you except to the proposed report or do you agree with it?

Mr. FOSTER. We agree with it entirely. We did not file exceptions on the grandfather phase of it, because the situation,
443 from the time we filed it, until the adjourned hearing had changed completely. We do feel that the proposed report is entirely correct on the theory of public convenience and neces-

sity, and we filed no exceptions to it on the denial of rights under the grandfather clause.

These vessels——

Commissioner MAHAFFIE. I have the impression that you applied for more than one right.

Mr. FOSTER. We did apply for the right. We set up in our original application the fact that these vessels had been used by the Detroit and Cleveland Navigation Company, not only engaged in transportation of automobiles, but miscellaneous or package freight. However, we are not urging that we be granted that right, because Mr. McCarthy did not in any way share the revenue on that business. We are not urging that he be granted the right for this miscellaneous package freight. We are here requesting he be granted rights purely and simply on the transportation of motor vehicles. We feel he should be granted those rights, not only on Lake Erie, but as the proposed report recommends, on the entire Great Lakes. That is from Detroit to Duluth, and Detroit to Buffalo. Those are the principal points. The testimony of the interested shippers, as of the Hudson Motor Car Company, Chrysler and Ford Motor Company, were that these vessels would be needed to serve the Lakes up there when they began to resume the production of passenger auto-
444 mobiles. There is no question but what they will be needed, not only on the Detroit and Cleveland-Buffalo run, but also on the Detroit to Duluth run.

Commissioner MAHAFFIE. Detroit to Chicago, also?

Mr. FOSTER. There has not been any cars moved to Chicago for a good many years.

Commissioner MAHAFFIE. I understood you were asking for the entire Great Lakes.

Mr. FOSTER. If that movement develops, primarily we are interested from Detroit-Cleveland to Buffalo, and Detroit to Duluth.

Commissioner MAHAFFIE. Are you asking for Chicago, or not?

Mr. FOSTER. No.

Commissioner MAHAFFIE. You are not asking for the entire Great Lakes?

Mr. FOSTER. No.

Mr. McCarthy just called my attention to the fact there was only one year to run on the solicitation contract instead of two. It was through this year.

The peak period of the movement of automobiles, as pointed out in the proposed report, one of the protestants, the Nicholson Universal Steamship Company, have taken the position not only in this case, but the Nicholson Transit case, that they have
445 ample facilities to move all these automobiles. They argued

from the standpoint if they operated 241 days, which is longer than anyone ever operated from the lower Lakes to the head of the Lakes, the only way they operated that time was a special vessel adapted to breaking ice; between Detroit and Cleveland, no one ever operated for that length of time, between Detroit and any other port.

They argue they have the facilities to handle all these automobiles. As Mr. Brenham pointed out in his testimony, that might be so if it was possible for the automobile manufacturer to so arrange his schedule to meet the arrangement of this one boat company. The movement of automobiles by boat is really comparatively small amount to Buffalo and Cleveland, to Duluth and for points immediately beyond.

The fact remains that all ships, including the applicant's ships and the protestants' ships are all operated to their capacity during the production period and during the normal production of automobiles. The change over is in the summer and the period during July and August of about six or seven weeks there where there is virtually no production of automobiles at all. That accounts for the light time all these vessels have to undergo, that are adapted purely for the transportation of automobiles. With the automobile production as it is, there is no question but all facilities are taxed during the production of automobiles, which is
446 the commencement of the season up there, which is April 15th, up until late June or early July. Then they change their models, get into production beginning along in September. They are very busy then until the end of the season.

So there is a great deal of lost time to all ships engaged in this traffic, every season, because during one period there, there simply is no cargo or automobiles for them to transport.

We feel the shippers who have for transportation between 85 to 90 percent of the automobiles, are a good judge as to whether or not these facilities are going to be needed. They have been needed. They have been used and they represent a large investment to these companies and they are particularly adapted to the transportation of automobiles. The vessels were surveyed by the O. D. T. as to whether or not they could not be converted into the transportation of iron ore. The conclusion was that the expense which would be necessary to convert them into the movement of iron ore would be very large and absolutely prohibitive, in the case of the need. These vessels, however, are in position and are capable of transporting grain and under the authority of the O. D. T. have been engaged in the transportation of grain all this season. They were permitted to remain in the grain trade. They were converted to that trade as inexpensively as pos-
447 sible and in such a manner as they could be as easily as

possible converted back to the automobile trade. I mean the material which was taken from the top decks and from the between decks is being preserved so it may be put back into these vessels and that they may re-engage in the transportation of automobiles when that transportation is again available.

Commissioner MILLER. Is that steel decks, or whatever?

Mr. FOSTER. The main supports are steel, Shelley beams and "H" beams.

Commissioner MILLER. Won't the W. P. B. take that?

Mr. FOSTER. As a matter of fact, those we take off the W. P. B did take some of it. It was only necessary to take out some of the elevator leg so we could get down into these hatches. It was not necessary to even open all the hatches. Mr. McCarthy had a time keeping all of that stuff that was actually taken off the boat and put on the dock. The W. P. B. caught up with him and took some of it.

Commissioner PORTER. Mr. Eisen.

Argument of Mr. S. S. Eisen on behalf of the Nicholson Universal S. S. Co. and the Detroit & Cleveland Navigation Co.

Mr. EISEN. May it please the Division: I speak for the Nicholson Universal Steamship Company and the Detroit and Cleveland Navigation Company, common carriers on the Lakes.

448 I do not want to comment on Mr. Foster's remarks with relation to the applicant's present activities, because nothing of that is shown on the record. I am not going to comment on it.

This proceeding does not present to the Commission any new or novel set of facts. The counterpart of every issue herein has been before this Commission, particularly under Part II of the Act, and in Part III cases.

Commissioner PORTER. Those don't necessarily govern, do they, water?

Mr. EISEN. Pardon?

Commissioner PORTER. The fact that rail cases and motor cases have been before us, does not necessarily bind us in deciding water cases?

Mr. EISEN. No; except the section of the statutes set out in Part II is the same thing as the section Part III.

Commissioner PORTER. Mustn't we have in mind the different practices, matters of operation, things of that kind?

Mr. EISEN. Yes. You certainly do, except as I will indicate you adopted your Part II findings in similar situations under Part III, as I will show, you have done in precisely the same issues here.

Now even under Part III findings you have enunciated clearly clear cut rules of water. You have adopted your
449 Part II findings. The United States Supreme Court has upheld you.

Despite the fact we have such fundamental issues here, we are arguing the case only because it came about in the Examiner's proposed report, that he repudiates the language of the Act, repudiates your previous findings, those which the Supreme Court has upheld, as I will show.

This proceeding was originally brought before you by virtue of an application filed by the applicants, a grandfather application as Mr. Foster testified. Because of applicants' realization of their inability to sustain the burden of proof under the grandfather act, they filed an interim operation application which is an application to perpetuate an operation in effect on February 1, 1941. There is no doubt of the fact it was an interim application. Mr. Foster termed it such throughout the hearing.

The Commission's order of hearing notice called it an application to continue an operation in effect on February 1, 1941.

So that technically the only issue before you is a determination, one, of whether applicants should be permitted to continue operations in effect on January 1, 1940, and, two, was applicant a common carrier on February 1, 1941, and does public convenience and necessity require the perpetuation of that activity.

450 Let us review the factual details in their entirety, as they affect this proceeding. I think the Examiner—the Commission asked the question whether there wasn't more than one application or set of rights sought here. There are two sets of rights, duplicate rights being sought by the same applicant, as I shall show. The Examiner has recommended the granting of both.

The applicants are the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company. The record shows there is common control, to all outward appearances they are the same company. They are both the alter ego of Mr. T. J. McCarthy. If it were not for the corporate fiction they wouldn't be here as two companies.

T. J. McCarthy owns the steamer "George W. Mead." The Automotive Trades Steamship Company owns the steamers "Morris S. Tremaine" and "George Ingalls."

In 1937, the Meade and Tremaine were chartered to the Detroit and Cleveland Navigation Company, to which I shall refer hereafter to the D & C for convenience. In 1940, the Ingalls likewise was so chartered. Those charters remained in effect through the season of 1941.

Concurrently with that chartering of the vessels, there was an agreement entered into with the applicant and the D & C. Under that solicitation agreement the applicant was to solicit
451 automobiles exclusively for the D & C. Under that agreement the applicant was to solicit, as I say, 100 percent for the D & C, and they devoted all their time and energy to that purpose, they held out only the D & C. There was no holding out of the applicant. All advertising matter, circulars and what not distributed were distributed by the solicitors in the name of D & C. That was the only holding out during this entire period, when the name of applicant appeared, it appeared only as representative or employee of the D & C.

Let us look at the charter parties. The three vessels were turned over to the D & C for the D & C's exclusive use. The crews of the vessels became the employees of the D & C. The D & C paid their salaries. The D & C paid workmen's compensation and social security. The D & C paid all the cost of maintenance and operations of the vessels, including officers' salaries, cost of fuel, oil, grease, cost of engineers' supplies, cost of stewards' department supplies, cost of towing vessels by tow, which was necessary; cost of repair and upkeep of vessels, equipment, machinery, boilers and other appurtenances; cost of all damages resulting from collisions in which applicants' vessels were participants.

Mr. Foster says the applicant bore certain parts of the expenses. That is right. It shows in the record that they bore during
452 the season of closed navigation. During the period of open navigation, the D & C paid 100 percent. There is no dispute, Mr. McCarthy admitted on the stand, that through the season the D & C had complete control, and dominion over the vessels. The applicant could never interfere with the operation of the vessels, could never order the ships dispatched to any part. He could not assume any operating factor in connection therewith.

It would appear unnecessary to go beyond section 302 (e) of the Act in disposing of this proceeding. That section states that anyone engaged in the charter of vessels to carrier, performs an exempt operation, not subject to regulation. Denial of these applications would permit applicant to continue in the future its past activities of chartering vessels, and, accordingly, would preserve unto the applicant the substantial parity between future and prior bona fide operations as is required by the U. S. Supreme Court, in United States vs. Carolina Freight Carriers Association, 315 U. S. 475.

As a matter of fact, the applicant states if these applications are not granted, they will continue in the future to make their

boats available under charter parties to the existing common carriers.

The proposed report goes away beyond the issues precipitated by the pleadings. The applicant, with respect to automobiles, prayed only for rights in Lake Erie. That is all the proof shows, all he asks for. The Examiner recommends general automobile rights throughout the ports.

453 The Examiner treats the application herein as though they were applications for entirely new operations, not interim operation applications.

With respect thereto, the protestants relied on the Commission's hearing notice which stated that the applications were continuance of operations on February 1, 1941, and also on the form. We were not wholly prepared to meet in every respect the issues of new proceedings such as was construed by the Examiner. We were, however, denied our request for adjournment to submit that additional testimony. We are not pressing that issue here.

Let us look at exactly what proof of public convenience and necessity was adduced by the applicant. Aside from a few shipper witnesses who testified very bluntly, they were interested in seeing Mr. T. J. McCarthy stay in the picture, they did not care how many vessels there were, what the availability of space was or anything else, they would like to see Mr. T. J. McCarthy stay in the picture because he was an old-timer in the automobile trade.

Disregarding their testimony, let us look at the rest of the testimony. This is the essence of the testimony on the issue of public convenience and necessity. If applicant's three vessels were not utilized by the common carriers in the trade in the last few years and if the common carriers in the trade had made

454 no effort to supplant those three boats, assuming they were not available and if the same method and means of dispatching the boats were used, without these three boats, as were used with the three boats, then in the opinion of these witnesses the common carriers would not be in position to handle all of the traffic.

The same general set of questions along that line was asked of each witness; that was what the witnesses testified about. All this.

Now the Act says nothing about the grant of a certificate of public convenience and necessity on the basis of past operations or past necessity. The Act calls for the proof of present or future public convenience and necessity. But even so, let us analyze this past necessity. In order to find that even past necessity existed, you would have to find that the existing boats lines could not carry additional automobiles or that the existing boat lines would not

have endeavored to secure additional boats, additional bottoms, that additional bottoms were unavailable.

Page 137 of the record, Mr. T. J. McCarthy testified that these three vessels were acquired by the applicants for the purpose of chartering them to the D & C; that the agreement of the D & C to charter was a consideration, I quote: This is wherein he states that an agreement was a consideration of his act, which signified that he was referring to the D & C. that they
455 (D & C) would "put on the boates that I (T. J. McCarthy) had purchased rather than chartering more outside boats from some other company." In other words, indicating there were other boats available. He inferred and indicated that. He entered into this agreement with the D & C to keep these other boats out, so they would use his.

As to the availability of space on the Lakes, the record clearly shows, for example, that testimony of the Nicholson Universal Steamship Company, contract carrier of automobiles, exclusively on the Lakes, had unused facilities in 1940 to such extent that if they were utilized to their full extent, Nicholson Universal Steamship Company carried additional automobiles of a quantity aggregating 7,342 additional automobiles to Buffalo, or 174,685 additional automobiles to Cleveland. Those figures may not mean anything in and of themselves. But the total offering of automobiles tonnage to all boat lines for all Lakes in the same year was 262,967 automobiles. 262,000, the total offering. Nicholson could have carried additional 174,000 with its existing facilities to Cleveland.

1940 was not a low year in tonnage. 1940 was double that of 1938. It was 65,000 cars greater than 1939. That would increase Nicholson's carrying capacity in the previous years by that amount. The record also shows that during 1935 and 1936,
456 Nicholson Universal had two of its big automobile carriers tied up idle at its Detroit dock throughout the year because there was not sufficient automobile tendering to warrant the running of those two boats.

In 1937, which is known in history as the second largest year of production of automobiles, there still was not sufficient automobiles tendered to warrant the use of those two boats as exclusive automobile carriers. They were converted into combination bulkers and automobile carriers. Nicholson being an exclusive automobile carrier, he stands, ready, and able, of record, to supply any and all automobile carrying facilities as may be necessary. The record shows their financial ability so to do.

The Examiner on sheet 6 of the proposed report says, referring to Nicholson:

"This company contends that it is able under present and prospective conditions to handle any tonnage offered to it without the necessity of acquiring additional vessels. These protestants point out that their present available facilities are more than adequate to handle the automobile traffic on the Great Lakes. They urge that there is no present or immediate future need for the use of applicants' vessels."

It is in the report, but no further comment is made.

457 If additional proof be necessary, answering Mr. Foster's contention of this 241 days operation, in October of 1940, Nicholson carried 29,000 automobiles. The record shows that was not the peak amount. They were handled with dispatch and without delay. If we use that month for a yardstick for the balance of the year, 29,000 in October; in April, Nicholson carried 14,000 cars. Therefore it had space for 15,000 more, using October as a yardstick. In May, it carried 23,000.

Commissioner MAHAFFIE. Wait a minute. Can you do that where you only operate part of April on the Lakes?

Mr. EISEN. Let us exclude April. It depends on when you start. Sometime you start the end of March, and sometime you start the first few days in April. Let us exclude the month of April.

Commissioner MAHAFFIE. Normally, you don't expect to stop until about the middle of April?

Mr. EISEN. It depends on the ice conditions. There have been times when you start in March—that is what is involved here. Lake Erie is the first lake. In May, 23,000 cars were carried, 6,000 less than in October. In June, 19,000 or 10,000 less than October. In July, 7,000 cars were carried, or 22,000 less than October. In August, 1,000 cars were carried, 28,000 less than October. In September it received 13,000 automobiles, 16,000 less than in October. In November it received 26,000, or 3,000 less than October.

458 These facts of record notwithstanding, the proposed report has this to say on sheet 7:

"The automobile traffic on the Great Lakes prior to 1942 required the use of applicants' vessels."

There is no comment as to why they were required, or anything else.

The next sentence:

"It would appear that their use will again be necessary upon resumption of normal production of automobiles."

The proposed report does not make the affirmative statement. It goes into conjecture, "it would appear." There is nothing in the record to sustain that statement.

The proposed report immediately follows with this statement, and this, incidentally, is the cornerstone upon which the recommendation is predicated. This sentence appears next:

"Refusal of applicants' right to initiate such operations with their own vessels would seriously impair, if not entirely destroy, applicants' investment in those vessels. Such refusal would not be in the public interest."

Then you find your suggestion of the issuance of a certificate. Before we get to the legal points, I don't see how refusal of the application or declination of the application would impair those vessels. Those vessels were required for the purpose
459 of chartering, whether or not you denied the applications, those vessels could still be used for the purpose of chartering. The applicant said he would charter them to available lines in the future. How it would impair the investment, I don't know.

Let us get down to the law. If this statement is to be construed as a grounds for giving rights, then the only criterion that you would look to for the issuance of rights of public convenience and necessity or any rights is, one, has the applicant any equipment; two, if we denied the rights would it impair the value of that equipment. That is entirely on the theory which the examiner proposes rights.

Now you have granted under the water carrier act, under Part III, you have granted rights to applications for example in docket No. W-385; Docket No. W. 559. Even if applicants did not own any floating equipment, that has never been the criterion; there you follow the owner-operator cases under Part II of the Act. By the same token, you have denied applications in many cases, to cite a few, Docket No. W-430; Docket No. W-685; W-448, even though the applicant owned equipment. You did not say here that you have to determine whether or not the denial of this application will impair their investment. The Act does not permit of any such thing. The Act says, is there present or future public necessity?

Under the motor carrier act the proceedings are too
460 innumerable to mention where rights have been granted by the Commission to operators who did not own equipment and where applications have been denied to applicants who did own equipment, because they did not sustain the burden of proof set up by the Act.

To adopt the proposed report of the examiner would be to repudiate the law in everything you have done. It would merely be to say to all applicants, here, if you want certificates, come in and show that you own equipment. That is all we require. Show us if you don't get the rights that your investment in that equipment will be impaired.

In Docket W-296, decided July 3, 1942, you refer to the decision of the United States Supreme Court in United States v. Rosenblum Truck Lines, Inc., 315 U. S. 50, as being determina-

tive of water carrier issue; that was a motor carrier case. There, and in many other cases, you have indicated that you are substantially interpreting Part II and Part III under the requirements of the United States Supreme Court, and in United States Navigation Company v. Cunard Steamship Co., 284 U. S. 474, at pages 480 and 481——

Commissioner MAHAFFIE. Would that apply to an interim application, or only a grandfather?

Mr. EISEN. The United States Navigation decision?

Commissioner MAHAFFIE. No; I was thinking about Rosenblum.

461 Mr. EISEN. I will discuss the Rosenblum case in just a minute. I think the theory, while the Supreme Court referred specifically to a grandfather application, I think the theory, is a like situation, as I shall indicate in just a moment.

Under Part II of the act you have had innumerable so-called owner-operating cases. The owner-operator is a man that owns equipment, does not operate it, chooses not to operate it, but to lease it to established carrier, the same as these applicants did. They chose not to operate their own equipment. They chose to charter it out to established carrier. In those owner-operator cases, which have had the sanction of the United States Supreme Court, you have stated that the man that operates is the man who gets the rights. The man who owns does not get the rights. It is the man who performs the operation, actual bona fide operation along the lines suggested by the United States Supreme Court in the Macdonald case.

The leading case——

Commissioner MILLER. In these cases, it is not the owner-operator.

Mr. EISEN. It is to a certain extent, sir.

Commissioner MILLER. I understood they just chartered the vessels.

Mr. EISEN. He chartered the vessel. He also worked for the company as solicitor.

462 Commissioner MILLER. But he did not actually operate the ship?

Mr. EISEN. No; he did not. That is of necessity, because of the physical——

Commissioner MILLER. I was thinking of the analogy with the motor carrier, the owner-operator. The owner actually drives the car.

Mr. EISEN. In many cases; there are numerous cases where the owner owns three or four trucks, charters three or four to

the carrier. The test is in the owner-operator who operates. Here the owner of the vessel chartered the vessel and worked for the carrier. Obviously, he could not perform all the functions on the vessel, as a driver does with the truck. I think the parallel is there 100 per cent to the extent it is physically possible to relate the two.

In our exceptions, beginning at page one, exception one, we give a much more detailed discussion of this owner-operator situation, like instances, detailed summations of situations. I am not going to further belabor you with them.

Let us go to the Rosenblum case. In that case the Supreme Court said it was the intention of Congress not to grant a multiplicity of rights to emanate from a single operation. Here we have two applicants, T. J. McCarthy and Automotive Trades, predicating all their claims on the operations of the D. & C
463 Navigation Company. The D & C ostensibly will secure grandfather rights from you. The examiner recommends that both applicants here, really one and the same, be given two sets of rights, all from the same operation. What they will do with two sets of rights, I don't know, probably retain one and sell the other, something like that. That, of course, is conjecture. Why the public interest will require two sets of rights, I don't know. It is clear the public interest and requirement does not require any.

Applicant has repeatedly argued there would not be a multiplicity of rights emanating from this single operation because the D & C will get its rights from the operation of its own vessel. All that applicants want are the rights emanating from the use by the D & C of their own vessels. This in effect is to say the operation of each unit produces a single right and that there is no multiplicity of rights. I cannot follow.

Mr. Foster has spoken about peak periods. With respect thereto, I merely want to refer you to the decision of Division 5 at 10 M. C. C. 292, where it was held that peak periods do not warrant the issuance of public convenience and necessity applications. They go for the normal year. I think that case speaks for itself.

On October 19, of this year, Division 4 in Docket W-210, National Barge Company, contract carrier application, made a finding that would apply with full force and effect here.
464 All that has to be done is to reproduce it here. I quote:

"If there is need for applicant's vessels they are available, as in the past, for charter by the carriers who provide the whole transportation service."

That is what you said in Docket W-210, in dismissing an application.

Here applicant again would be able to utilize their vessels as they did in the past, chartering them to carriers.

I think that the language of the Commission in the N. C. and D. Oil Company, contract carrier application, 1 M. C. C., 332, is very apropos here, with the exception that the motor carrier industry is used. The water carrier industry could be substituted. I quote:

"We think in order to force a sound, economic condition in the motor carrier industry, existing motor carriers should normally be accorded the right to transport all traffic which they can handle adequately, efficiently, and economically in the territory served by them as against any person now seeking to enter the field of motor carrier transportation and circumstances in such as are here disclosed. It will be noted that applicants do not propose a service which is in any way particularly adapted to the requirements of the shipper or consignee, or in fact which differs in any way from the service now performed in this traffic."

The proposed report on sheet 7 makes this statement:

465 "Applicants had not operated vessels in the automobile-carrying service between points on the Great Lakes prior to the hearing herein. They were not in operation in such service on January 1, 1940, and continuously since, and therefore are not entitled to continue such operations under the so-called grandfather rights of section 309 (a) of the act."

We specifically request a finding as to applicants' status on February 1, 1941, the interim operating date. The report makes no such finding. However, applicant specifically testified there operations on January 1, 1940 were no different, were exactly the same as their operations on February 1, 1941. As a matter of fact, the operations were the same up to February of 1942. So that if they went in operation on January 1, 1940, it is obvious they were not in operation on February 1, 1941. They weren't in operation on February 1, 1941. They have nothing to perpetuate. They ask for continuance of operations in effect on February 1, 1941.

We ask that the Commission amend the proposed report to find, first of all, that the applicants do not possess grandfather rights. I think that is well settled. I think they admit they do not have grandfather rights. We ask the Commission to find the applicants were not in operation as carriers in regular movement on February 1, 1941, therefore have nothing to perpetuate. I

466 ask you to find applicants have failed to sustain the burden of proving public convenience and necessity. There is no need for additional vessels in the service, thereupon, we ask you to dismiss the applications in their entirety.

Commissioner MAHAFFIE. Did the applicants have their own tariffs on February 1, 1941?

Mr. EISEN. Not on February 1, 1941; no, sir. All transportation via the D & C, whenever it occurred, it occurred on the D & C billings, on the D & C tariff rates, rules and regulations. I am glad you mentioned it. I forgot to mention it. They filed a tariff late in 1941. No traffic ever moved under that tariff within this record. I thank you, sir.

Commissioner PORTER. Mr. Foster.

Reply argument of Mr. Sparkman D. Foster on behalf of applicants

Mr. FOSTER. In connection with these vessels laid up in 1937, the two smallest ships they owned, the Sultana and Sonora at that time, all the common carriers had available to them was the bulk automobiles and the large majority of the automobiles that were transported upbound, that is to Lake Michigan and to Duluth were on the decks of these vessels. They paid very nominal amounts. The record shows $5 or $6 an automobile, and collected the full tariff. In these bulk carriers, they would
467 stop by Detroit loaded with coal, and would carry up automobiles. Up to 1937, up until the time these two boats were converted, there was no occasion for them to operate, because they were actually getting deck space of these other vessels cheaper than they could operate a ship to Duluth. Whatever the bulk operator got was practically gravy. He stopped, took him two hours to load, two hours to unload. When the Transportation Act of 1940 was approved, all of the carriers, without exception, that is, what is known as the Lake carrier group that operate the bulk boats, all agreed among themselves they would not transport any more automobiles on deck. None of them have transported any since that time.

The testimony in the Nicholson Transit case, Mr. F. L. Hewitt Jr.'s testimony, incorporated by reference in this case, he testified that during the peak periods of 1940 and 1941, that all of the facilities which were available to them were being used and that they were comfortably loaded. I tried to get them to say they were absolutely loaded to capacity, but he said they were comfortably loaded. The shipper testimony that Mr. Eisen treats so lightly represented eighty-five or ninety percent of the industry, so far as shipping by water is concerned. They testified that during the peak period of 1940 and 1941, with all the facilities there were available, including these three boats, that not only the D & C, through the Nicholson Universal, were
468 unable to handle the traffic. Actually cars which had been

taken down to the automobile dock had to be transported away from those docks by truck. That testimony is in the record. Mr. Hewitt, Jr. also testified to show the seasonal type of this transportation, that during August of 1941, that one of their ships, they claimed they operated eleven, that just one of those ships could have handled all the automobiles on Lake Erie, Lake Michigan, and Duluth, and still had spare time left. We are not claiming this on the basis it is highly seasonal. We are saying it is only about five months out of the year when these automobiles do move by water. Part of the time it is closed, due to ice conditions. The rest of the seven and a half months season, about six weeks, a month and a half of it is taken up on the change over, when there are no automobiles to transport.

I don't think it was the idea of Mr. Brennan, the traffic manager of Chrysler, Mr. Hearn, from the Ford Motor Company, or the Hudson representative to have Mr. McCarthy in this business because he was an oldtimer. Mr. McCarthy has been intimately connected with the transportation of automobiles since they were transported by water, first with Nicholson Transit, and later with the Nicholson Universal, the protestant, and later the D & C, the other protestant. I think they sincerely felt from their knowledge of the business that these vessels were vitally needed.

Mr. Eisen says these common carriers, they will put on
469 these boats. The fact remains that when the traffic was there and developed, one of these protestants flatly refused to put them on, stated they would not further invest in automobile boats. Mr. McCarthy was prevented under his solicitation agreement, starting back in 1933, first with him, later with the T. J. McCarthy Steamship Company, to engage in the transportation. He also was prohibited under that contract from soliciting for any one except the Detroit and Cleveland Navigation Company. I don't think any complaint was made in this record by the Detroit and Cleveland Navigation Co. as to the arrangement between the two companies not being scrupulously observed on both sides during the time they were in operation.

Commissioner MAHAFFIE. Do you approve of it on the continuance of the interim operation?

Mr. FOSTER. At the time the application was filed, I think the notice did say interim operation. At the time of the hearing in Detroit, Mr. McGarth could not adjourn the case to some future date because of other engagements, but he did offer, I think the record will show, that he would give them time the following day. Nicholson Universal's main office is in Detroit.

Commissioner MAHAFFIE. I was asking about your application, was it?

Mr. FOSTER. It is an interim application. We dis-
470 cussed it with the Bureau and we were told that was what to file. All the requirements for that application are the same as the other. We had to file our financial statements.

Commissioner MAHAFFIE. You contend that on the interim application we should consider the convenience and necessity as though it were a new operation?

Mr. FOSTER. Yes. I think you have an absolute right to do it. You have done it in other cases where the situation changes. I certainly do not think that where the applicant has shown he is ready, willing and able to perform where they say this service is absolutely needed, that application should be thrown out on a pure technicality.

Commissioner MAHAFFIE. You think we should disregard the fact, if it be a fact, that you were not operating on the interim date?

Mr. FOSTER. Yes, I think you can do that where the situation is completely changed.

Commissioner MAHAFFIE. It is obvious you and Mr. Eisen disagree about that. What about the matter, if you should have two rights on this one operation, as Mr. Eisen said.

Mr. FOSTER. The background of that is that the T. J. McCarthy Steamship Company is a Michigan corporation. At the time Mr. McCarthy acquired the Tremaine and Ingalls, the person from whom he acquired them advised that he have a Del-
471 aware corporation. He did that. He has no thought of selling any rights to anybody.

Commissioner MAHAFFIE. He would not want but one right, would he?

Mr. FOSTER. If it can be worked out, the tax feature, and everything. He only wants one right. He is not here trying to seek two rights with the idea of going out and peddling one of them. If he gets the right, he can work out a charter arrangement some way and work on one certificate.

Commissioner MAHAFFIE. May your application be now considered modified to the extent you are now asking one right?

Mr. FOSTER. Yes, with the idea we would like from certain tax angles to figure out just how we want it.

Commissioner MAHAFFIE. You will have to figure that out later and suggest which.

Mr. FOSTER. And suggest which of the companies have that right. We are certainly not asking for two rights, with any idea of peddling operating rights. It can be worked out on one, and, as a matter of fact, it will be, because the mortages are now paid off on all the ships.

Commissioner PORTER. These cases are submitted and will be taken under advisement by the Division. The Division is now adjourned.

(Whereupon the above arguments were concluded, the cases submitted and the Division adjourned at 10:55 o'clock a. m.)

472 BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. W-592

APPLICATION OF T. J. MCCARTHY STEAMSHIP COMPANY FOR A CERTIFICATE TO OPERATE AS A COMMON CARRIER IN THE TRANSPORTATION OF PROPERTY BETWEEN PORTS ON THE GREAT LAKES

Docket No. W-729

AUTOMOTIVE TRADES STEAMSHIP COMPANY (APPLICATION TO OPERATE AS A COMMON CARRIER BY WATER)

FORT SHELBY HOTEL,
Detroit, Michigan, June 4, 1943.

Met, pursuant to notice, at 9:30 o'clock, a. m.
Before J. P. MCGRATH, Examiner.

Appearances

As before, and the following additional appearances:

W. E. Emblidge, 223 Erie Street, Buffalo, New York, appearing for Great Lakes Transit Corporation. J. M. Arnold, Detroit, Michigan, appearing for Detroit and Cleveland Navigation Co.

473 PROCEEDINGS

Exam. MCGRATH. Come to order, please, gentlemen.

The Interstate Commerce Commission has assigned for rehearing at this time and place Docket No. W-592, T. J. McCarthy Steamship Company, common carrier application, and Docket No. W-729, Automotive Trades Steamship Company, common carrier application.

Oral appearance will be received at this time only of those persons who have not heretofore entered appearances in these proceedings. Are there any such appearances to be entered?

Mr. SULLIVAN. There will be just one, your Honor.

Exam. MCGRATH. All right.

Mr. SULLIVAN. W. E. Emblidge, vice president, Great Lakes Transit Corporation, 223 Erie Street, Buffalo, New York, ap-

pearing for Great Lakes Transit Corporation. My own appearance was put in before. I understand you are not receiving duplicate appearances at this time.

Exam. McGRATH. No. Are applicants ready to proceed?

Mr. FOSTER. Yes, sir.

Exam. McGRATH. You may call your first witness.

Mr. FOSTER. Mr. McCarthy.

Exam. McGRATH. You have been previously sworn and testified in these proceedings, have you not, Mr. McCarthy?

Mr. McCARTHY. Yes.

Exam. McGRATH. You understand that the oath which
474 you took at that time, still applies.

Mr. McCARTHY. Yes, sir.

Exam. McGRATH. All right.

TIMOTHY J. McCARTHY recalled.

Direct Examination by Mr. FOSTER:

Q. Your full name is Timothy J. McCarthy?

A. Yes, sir.

Q. Your position with the applicants herein, T. J. McCarthy Steamship Company and Automotive Trades Steamship Company?

A. President.

Q. Of both companies?

A. Yes, sir.

Q. You signed the petition for reconsideration and rehearing on behalf of the applicants in these proceedings, did you not?

A. Yes.

Q. I will ask you, Mr. McCarthy, whether or not these companies have transported automobiles on the Great Lakes since the last hearing in this case in February of 1942.

A. Yes, sir; all of the vessels have carried automobiles between Detroit and Buffalo.

Q. Will you give us the circumstances, please, under which they have transported such automobiles?

A. We had had two or three calls from different army transportation agencies and army officers, asking us if we could
475 transport automobiles from Detroit to Buffalo on the decks of our vessels, and we assured them that we could, and we put in rates to handle automobiles in connection with deckloads of cars, or in the form of deckloads, on vessels downbound from the head of the lakes with grain for Buffalo.

Q. Now following the hearing in February of 1942, what if any physical changes were made in the vessels owned by these companies?

A. At the request of the Office of Defense Transportation—we had been asked that we be prepared to carry iron ore for the season of 1943—or it was indicated that we might be asked to carry iron ore for the season of 1943, so that we did take out a lot of structure which was left in the boats, in the way of between-decks elevators and so forth, and rebuilt bulkheads so that we could carry iron ore for the season of 1943 if we should be called upon to do so.

Q. And following the hearing in February of 1942, were the vessels changed to any extent so that they might be able to transport grain?

A. Yes, sir, they were. There was considerable work put in which would facilitate the handling of grain. They had carried grain all during 1942, but this additional work was to make it so that they could carry it handier and better.

Q. Were the changes which were made in the boats in the spring of 1942 likewise at the suggestion of ODT?

476 A. In the spring of '42?

Q. Yes.

A. I don't believe that we had a direct request from the ODT in 1942; no, sir; to change the vessels over, but recognizing the fact that there would not be any automobiles to ship, and in order to have our vessels ready to carry something, we felt that there would be a use for the vessels in the bulk trade, and so we removed a lot of the between-decks planking, and so forth, which was originally installed to make those vessels automobile carriers, so as to make them available to carry grain for the year of 1942.

Q. When you refer to automobiles, do you mean auotmobiles for civilian use?

A. No, sir—well, I beg your pardon. The manufacturer of automobiles for civilian use stopped in the early part of December of 1941, or January 1942, so that there were no more automobiles manufactured for civilian use after that time.

Q. I will ask you whether or not there have been motor vehicles in large numbers manufactured for government or army or military use?

A. Yes, sir; there has been an immense amount of ambulances, reconnaissance cars, weapon carriers, and so forth, various motor vehicles of that sort, manufactured for military purposes.

Q. And they are largely manufactured by the same people who formerly manufactured pleasure automobiles; is that correct?

477 A. Yes.

Q. Did you have any discussion with the representatives

of the army at the time they called upon you to transport these automobiles in 1942?

A. Yes.

Q. What were those discussions?

A. We were asked at that time by Lieutenant Draper, now Captain Draper, if we could handle some of these automobiles to Buffalo, and we told him that we could, on the decks of our vessels, as they passed Detroit downbound loaded with grain for Buffalo. He advised me that they had quite a large volume to move, and that there were not sufficient vessels to move them—or that there were not sufficient facilities, rather, to move them, by boat or otherwise; and for that reason he asked us to participate in the movement; and we told him that we would.

By Exam. McGRATH:

Q. From what ports to what ports?

A. From the port of Detroit, Michigan, to Buffalo, New York. That was the only place that we could have automobiles. The nature of the movement of grain is such that those would be the only ports where we could handle them. The destination port always was Buffalo, in the case of the grain.

By Mr. FOSTER:

Q. You had no vessels into Cleveland with grain on direct regular runs at that time, did you?

A. No, sir.

Q. And you did handle about how many carloads of
478 these automobiles on the decks of your vessels?

A. I think it was about 12, but the total number of cars was 950—or the total number of army vehicles, rather, I mean to say, was 950.

Q. Now, about what is the normal turnaround, on the average, from the head of the lakes to Buffalo and return, when engaged in the grain traffic?

A. Approximately ten days.

Q. Ten days?

A. Yes, sir.

Q. So that, with three vessels, you would have three vessels during approximately each ten-day period?

A. Yes, sir.

By Exam. McGRATH:

Q. Well, is that the fact, that you did operate three vessels during that season?

A. All during the season of 1942; yes, sir; and we are so operating them in 1943, in the bulk trade, at the present time, mostly carrying grain.

By Mr. FOSTER:

Q. And those are the same three vessels which have been mentioned in the earlier testimony here, are they not?

A. Yes, sir.

Q. The George W. Mead, the T. J. McCarthy, and the George H. Ingalls.

A. Yes, sir.

Q. And those three vessels are all owned free and clear
479 by the applicants in this case; is that correct?

A. Yes, sir.

Q. Now who requested you last fall to have the two larger of those three ships, that is, the McCarthy and the Ingalls, prepared to carry iron ore during the season of 1943?

A. Mr. A. T. Wood, director of the Great Lakes Division of the Office of Defense Transportation, at Cleveland, Ohio.

Q. And following that suggestion did you actually go ahead and prepare those vessels for the transportation of iron ore?

A. Yes.

Q. Will you please explain to the Commission just what it was necessary to do, in order to have those vessels made ready for the iron ore trade?

A. Well, we had to take out all of the center stanchions in the vessels; we had to take out the deck beams, that we had left in there from the previous year, which were not in the way when handling grain, but which would be in the way in handling iron ore; we had to remove the elevators, which would be in the way in loading ore, but which again were not in the way when loading grain; and we had to strengthen and renew the bulkheads, two in each vessel, as required by the American Bureau of Shipping, the Classification Agency for the examination of vessels on the Great Lakes.

Q. Now, what if any preparations have you made to reconvert these ships to the automobile trade, following the present
480 emergency?

A. We have saved all of the steel, the elevators, the elevator engines, the fans and ventilating equipment,—as a matter of fact, all of the equipment that we originally put into the vessels to make them into automobile carriers, at the time they were originally used as bulk vessels. That is, we had to put in all of this equipment to make them automobile carriers at the time we got them. Now the ships are practically in the same condition that they were in originally, in 1936.

By Exam. MCGRATH:

Q. And not adapted, therefore, for the carriage of motor vehicles?

A. Not adapted for the carriage of automobiles below decks, no, sir, but on deck, it is perfectly all right, and that is where we carried them last year, when we handled them.

By Mr. FOSTER:

Q. Now, approximately how many automobiles are you able to transport on the decks of these vessels at one time?

A. We could carry at one time about 125 automobiles on the decks of two of the vessels, and about 90 on the decks of the others.

Q. With their present construction, what is the deck capacity of the ships?

A. About 80 vehicles per ship, depending on the size, of course.

Q. Up until the passage of the 1940 Transportation Act it was quite customary to transport automobiles on the decks of freighters, was it not?

A. Yes.

481 By Exam. MCGRATH:

Q. Just for the record, Mr. McCarthy, when you refer to freighters, what do you mean?

By Mr. MCCARTHY:

A. Freighters, Mr. Examiner, are——

Mr. SULLIVAN, Bulk carriers?

A. Bulk carriers, rather than passenger vessels. The two classifications really are freighters and bulkers; and then there are automobile boats that were originally bulkers, but by reason of conversion they became automobile boats. Freighters are boats with one hold, and probably two or three compartments, and open hatches on the top, that are used generally in the transportation of bulk commodities.

By Exam. MCGRATH:

Q. In what part of the vessel would automobiles be transported, in a vessel of that type—the bulker vessel?

A. On the deck, when she is strictly a bulker; that is, on the spar deck, or the top deck. They never put any below decks.

By Mr. FOSTER:

Q. Now, the construction of the conventional type of vessel used on the Great Lakes, the conventional bulk type of vessel, is that the engines are aft; is that correct?

A. Yes.

Q. And the pilot house, and the crew's quarters, for the deck crew, are forward; is that correct?

A. Yes, sir.

Q. And that leaves a long open space between the coal bunkers aft, and the pilot house forward?

482 A. Yes, sir.

Q. Without any interference at all?

A. That is right.

Q. Have you received any recent inquiries concerning the transportation of motor vehicles for the present season, Mr. McCarthy?

A. Yes, sir, I have, twice, last week.

Q. From whom were those inquiries received?

A. One of them was from Major Stutz, of the Army Ordnance Division, or the Transportation Section—I don't just know what the correct title would be, but the records are at Detroit; and the other inquiry was from one of the truckers who has contracts to haul for the government, and wanted to use the decks of our vessels between Detroit and Buffalo for the intermediate haul, they having through rates, and our rates applying in connection with trucking companies that are certified common carriers.

Q. And are you prepared at this time, or are your companies prepared at this time to engage in such transportation?

A. Yes.

Q. What do your figure to be your monthly capacity to transport motor vehicles between Detroit and Buffalo?

A. With a ten-day turnaround for each of our ships, it would give us three trips per month for each ship, or a total of nine trips per month, with an approximate capacity of 80 to 90 vehicles on each vessel, which would be from 640 to

483 720 total vehicles per month.

Q. Now under normal conditions—and by that I mean, under peacetime conditions—would it be possible to operate successfully any of these three vessels in the bulk trade?

A. No, sir, I don't believe that it would be. As a matter of fact the vessels, all of the vessels that were in the former automobile trade, were considered as being obsolete as far as bulk carrying was concerned in normal times. Also, there is the fact that the modern vessels will carry practically twice as much, twice the tonnage of the vessels that have been in the past used in the automobile trade. In other words, those vessels were more or less obsolete in the bulk trade; and with the recent building on the Great Lakes by the Maritime Commission of 16 large and more modern ships, that is going to mean that our vessels, vessels of the type of our vessels, would not be usable, or at least, would not be economical; you could not make a living on them, in other words, competing with vessels carrying twice the capacity.

Q. When you bought the McCarthy and the Ingalls, they were then lying idle at Buffalo, were they not?

A. Well, one of them was at Buffalo; yes, sir; and the other was at Cleveland; but they had been idle at that time for some two or three years, or perhaps more; I do not know just exactly how many.

Q. And you converted them into automobile carriers?

484 A. Yes, sir.

Mr. FOSTER. Mr. Reporter, Applicants' Exhibit No. 33 for identification, please.

(Applicants' Exhibit 33, Witness McCarthy, marked for identification.)

By Mr. FOSTER:

Q. Now, Mr. McCarthy, I show you what has been marked by the reporter as Applicants' Exhibit No. 33 for identification, and I will ask you to state briefly for the record what that is?

A. This is a copy of a letter from the War Shipping Administration office at Cleveland, Ohio, signed by Robert D. Smith, Regional Manager.

Q. Addressed to whom?

A. Addressed to the T. J. McCarthy Steamship Company.

Q. You received the original of that letter, did you?

A. Yes, sir.

Mr. FOSTER. At this time we wish to offer Applicants' Exhibit No. 33 for identification in evidence as Applicants' Exhibit No. 33.

Exam. MCGRATH. Without objection, the exhibit will be received and marked as Applicants' Exhibit No. 33.

(Applicants' Exhibit 33, Witness McCarthy, received in evidence.)

Mr. FOSTER. I will not read it, Mr. Examiner.

Exam. MCGRATH. No.

485 Mr. FOSTER. I take it that will not be necessary.

Exam. MCGRATH. That will not be necessary, no, because it is now a part of the record.

Mr. FOSTER. Yes.

By Mr. FOSTER:

Q. Now, Mr. McCarthy, since the hearing in February of 1942 has there been any substantial change in the situation on the Great Lakes with respect to vessels that were formerly engaged in the transportation of motor vehicles?

A. Yes, sir, there has been a very decided change. There are no vessels of what is known as the automobile type vessels left on the Great Lakes, engaged in the hauling of automobiles. Some of the vessels that were formerly hauling automobiles have been taken over by the government. Fourteen of them have gone down the Mississippi River—that is, vessels that were formerly

owned by the Great Lakes Transit Company have been taken over by the government, and moved down the Mississippi River; one Detroit & Cleveland freighter, the steamer Fitch, has also been taken over by the government; and one large passenger vessel of the D. & C., which carried automobiles and passengers, has also been taken over by the government. Five of the Nicholson Universal Steamship Company vessels—that is, that is the holding company; the vessels were Over-Lakes Freight Company vessels—have been bought by the Maritime Commission; and the last five are at the present time engaged in the bulk trade carrying bulk commodities.

486 Q. Do the applicants in this case publish rates on grain from the head of the lakes to Buffalo when transported along with automobiles?

A. Yes.

Q. And did they transport grain with automobiles in the case of those various cargoes which you have described as having transported last summer?

A. Yes.

Q. I will ask you, Mr. McCarthy, if it is not true that the ODT very stringently regulates at the present time all means of transportation on the Great Lakes except purely package freight?

A. Yes.

Q. The applicants in this case are prepared and ready at this time to transport motor vehicles not only from Detroit to Buffalo, but from Detroit to the head of the lakes; is that correct?

A. Yes, we could.

Q. From your discussions with representatives of the Ordnance Department of the United States Army, and the Motor Transport Service, is it your belief that there will be a need for this transportation during the coming season, or the present season?

A. Yes.

By Exam. McGRATH:

Q. From and to what ports?

A. Definitely, from Detroit to Buffalo, but not definitely from Detroit to the head of the lakes, although there is still a
487 possibility that there may be some of that traffic offered, as I was told just the other day.

By Mr. FOSTER:

Q. Now, Mr. McCarthy, I believe you testified earlier in the proceeding—and we do not want to be repetitious at all—that you have had a general knowledge of the transportation of automobiles over the Great Lakes for a good many years.

A. Yes.

Q. With the present facilities which are available or which could be made available within a reasonable time, I will ask you if the normal volume of automobiles which are moved in peacetimes could possibly be moved with those facilities if normal production was resumed?

A. No, sir, they could not possibly be handled.

Q. All 21 of the ships which are mentioned in applicants' Exhibit No. 33, either by name or indirectly, were formerly engaged in the transportation of automobiles on the Great Lakes to some extent; is that correct?

A. Yes, sir.

Q. And they comprised the very large majority, or the very large percentage of the vessels which are there indicated; is that correct?

A. Yes, sir.

Q. I will ask you, Mr. McCarthy, whether or not in your opinion, from your experience during the season of 1942, and from
488 your discussions with the representatives of the Army Transport Service, there is now a present and an immediate future need for the transportation of motor vehicles on the Great Lakes?

A. Yes, sir.

Mr. ELDRED. Just a moment, if the Examiner please. My name is Eldred, and I am a party of record in this proceeding. I do not mind this witness testifying to his own opinion, but when he brings in army officers, I would like to know definitely who they are, and what they had to say; and even then, I think that we are getting into a good deal of hearsay evidence here. But as I say, I am perfectly willing for the witness to testify to his own individual opinion, but when he purports to testify as to the opinion of somebody else, I am objecting to any such hearsay testimony.

Mr. FOSTER. I do not think that I asked Mr. McCarthy to testify to anything of that sort, your Honor.

Mr. ELDRED. If I understand the question correctly, counsel asked the question in such a way that that would be the effect of the answer of the witness.

Exam. MCGRATH. Read the question and answer, please, Mr. Reporter.

[Question and answer read.]

By Exam. MCGRATH:

Q. That is a statement of your opinion, is it, Mr. McCarthy?

A. Yes, sir.

489 Exam. MCGRATH. That was my understanding.

Mr. ELDRED. If that is the case, then, Mr. Examiner, I will withdraw my objection.

Exam. MCGRATH. All right.

Mr. FOSTER. Mr. Reporter, Applicants' Exhibit No. 34 for identification, please.

(Applicants' Exhibit 34, Witness, McCarthy, marked for identification.)

By Mr. FOSTER:

Q. Mr. McCarthy, I show you what has been marked by the reporter as Applicants' Exhibit No. 34 for identification, and I will ask you to state briefly for the record what that is?

A. This is the report—or a copy of the report of the Interstate Commerce Commission in Case 28162, or in Docket No. 28162, Nicholson Universal Steamship Company—ownership interest of New York Central Railroad in Nicholson Universal Steamship Company, decided May 10, 1943.

Q. Did you receive at your office the original of that decision?

A. Yes, sir.

Q. And Applicants' Exhibit No. 34 for identification, is a true and correct copy of that decision; is that correct?

A. Yes, sir.

Mr. FOSTER. At this time, Mr. Examiner, we wish to offer Applicants' Exhibit 34 for identification in evidence as Applicants' Exhibit 34.

490 Exam. MCGRATH. Is there any objection?

Mr. EISEN. May I inquire as to the relevancy of that decision in this proceeding, if the Examiner please? I am not making any objection to it. I would just like to know how it is tied up with this proceeding.

Mr. FOSTER. It definitely shows, if you are familiar with it, Mr. Eisen, that the Over-Lakes Freight Corporation and the Nicholson Universal Steamship Company have actually disposed of at least five of their ships, concerning which there was a great deal of testimony in the earlier record.

Mr. EISEN. Well, that is shown by the previous exhibit, No. 33, is it not?

Mr. FOSTER. Part of it is; yes.

Exam. MCGRATH. Is that the purpose of presenting this exhibit, counsel?

Mr. FOSTER. Part of the purpose.

Exam. MCGRATH. What is the other part of the purpose?

Mr. FOSTER. That is the main purpose.

Exam. MCGRATH. Well, does it have any other purpose?

Mr. FOSTER. That is the principal purpose of the offer of the exhibit, your Honor.

Mr. EISEN. We will admit, Mr. Examiner, that those five boats have been acquired by the government—or that the title to those five boats have been acquired by the government.

Exam. MCGRATH. The exhibit will be received in evi-
491 dence and marked as Applicants' Exhibit No. 34.

(Applicants' Exhibit 34, Witness McCarthy, received in evidence.)

By Mr. FOSTER:

Q. Now, Mr. McCarthy, these vessels, that is, the vessels of the applicants, rather, would have substantially the same capacity to transport automobiles upbound to the head of the lakes as they would to the lower lake ports, would they not?

Mr. ELDRED. Just a moment. May I hear that question again, please, Mr. Reporter.

(Question read.)

Mr. ELDRED. I suggest, Mr. Examiner, that that question is a little bit leading.

Exam. MCGRATH. Yes.

Mr. ELDRED. As most of the other questions have been.

By Mr. FOSTER:

Q. Well, then, Mr. McCarthy, I will ask you as to whether or not your vessels would have the same capacity, the same weekly or monthly capacity to transport automobiles from Detroit to the head of the lakes, as they would from Detroit to the lower lake ports?

Mr. EISEN. Just a moment. I object to that question. The only thing that we have involved here is an operation from Detroit to Buffalo, as I understand it.

Mr. FOSTER. Oh, no, very decidedly not, if the Examiner please. This is an application, based upon convenience and
492 necessity.

Mr. ELDRED. May I inquire at this time, if the Examiner please, just so that the record will be perfectly clear: what is the application for, that is here under consideration in this proceeding?

Mr. FOSTER. It is an application to transport automobiles on the Great Lakes.

Mr. EISEN. My recollection of the application here under consideration is that it is an application to continue an interim operating right.

Mr. FOSTER. Oh, No.

Mr. EISEN. And that it was so conceded by Mr. Foster at the oral argument.

Mr. FOSTER. Oh, no.

Mr. EISEN. Well, I will stand on the record. I think that the record will bear me out.

Exam. McGRATH. Well, Mr. Foster, do you desire to make your position any more definite than you have up to the present time?

Mr. FOSTER. Why, I do not see how I very well can, your Honor. It is simply an application, based on convenience and necessity, for the transportation of automobiles on the Great Lakes.

Exam. McGRATH. From and to all ports on the Great Lakes?

Mr. FOSTER. That is correct, yes, sir,—with the exception of Chicago.

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Mr. ELDRED. Well, now, if the Examiner please, in the report of the Commission, by Division 4, decided November 25, 1942, in the second paragraph of that report, it says: "By separate applications filed May 31, 1941, and as amended October 18, 1941, the T. J. McCarthy Steamship Company and Automotive Trades Steamship Company, hereinafter referred to as the McCarthy Company and the Automotive Company respectively, of Detroit, Michigan, seek a certificate of public convenience and necessity under the provisions of Section 309 (a) and 309 (c) of the Interstate Commerce Act, authorizing operation as a common carrier by water, in interstate or foreign commerce, in the transportation of motor vehicles, as described in the footnote, between Detroit on the one hand, and Cleveland, Ohio, Buffalo, New York, and Erie, Pennsylvania, on the other hand, and between Buffalo and Cleveland."

Exam. McGRATH. Read on.

Mr. ELDRED. "On oral argument applicants indicated that they desired authority to serve other points on the Great Lakes such as Duluth, Minnesota."

Mr. EISEN. My recollection of the oral argument, if the Examiner please, is that the question was specifically propounded, and the answer made in connection with Mr. Foster's discussion of the bulk cargo need of automobiles. On page 374 of the record of the oral argument, Mr. Commissioner Mahaffie

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asked Mr. Foster, "Do you approve of it on the continuance of the interim operation?" Mr. Foster specifically said, "It is an interim application."

Mr. FOSTER. What page is that?

Mr. EISEN. Page 374. Mr. Foster specifically admitted that he had filed an interim operating application.

Mr. FOSTER. One page 376—or rather, I should say, page 375, Commissioner Mahaffie, asked "You contend that on the interim application we should consider the convenience and necessity as though it were a new operation?" To which I replied, "Yes. I think you have an absolute right to do it. You have done it in other cases where the situation changes. I certainly do not think

that where the applicant has shown he is ready, willing and able to perform where they say this service is absolutely needed, that the application should be thrown out on a pure technicality.

"Com. MAHAFFIE. You think we should disregard the fact, if it be a fact, that you were not operating on the interim date?

"Mr. FOSTER. Yes; I think you can do that where the situation is completely changed.

"Com. MAHAFFIE. It is obvious you and Mr. Eisen disagree about that. What about the matter, if you should have two rights on this one operation, as Mr. Eisen said?"

And again, we discussed that. Then earlier in the oral
495 argument in response, I believe, to a question by Mr. Eldred, we stated that we were not asking for Chicago because automobiles had not moved there for a number of years.

Mr. EISEN. The fact remains, however, Mr. Foster, that you did admit, as shown by the record, that it is an interim operating application. You did not deny it at that time, although you deny it now.

Mr. FOSTER. No, we denied it at that time, and stated that they had the right to consider convenience and necessity——

Mr. EISEN. No; you did not.

Mr. FOSTER. Under the changed conditions.

Mr. EISEN. The question involved is not the question of whether you can prove convenience and necessity right now. The question is merely as to whether it is an interim operating application or not. I think that the record very definitely shows that Mr. Foster admitted to the Commission that it is an interim operating application. Now, that is the only question that is involved, and not the question of what proof he may submit under it.

Exam. MCGRATH. Well, what is the essential difference between an interim operating application, and an application for authority anew?

Mr. FOSTER. I do not think there is any.

Exam. MCGRATH. That is an application for a new operation.

496 Mr. FOSTER. I do not think there is any.

Exam. MCGRATH. What is the basic essential difference?

Mr. EISEN. There are three different forms of application, Mr. Examiner. One is the grandfather form; another is the interim application; and the third is for a new operation.

Exam. MCGRATH. Oh, yes; I understand that, but I say, what is the essential difference between the last two—or what are the essential differences?

Mr. EISEN. Under an interim operating application——

Exam. McGRATH. It is necessary to prove convenience and necessity, is it not?

Mr. EISEN. To continue the interim operation.

Exam. McGRATH. Yes.

Mr. EISEN. Well, now, Mr. Foster does not contend, as I understand it, that during the interim period the McCarthy Steamship Company has carried automobiles to the head of the lakes.

Mr. ELDRED. The entire application, if I understand it correctly, is one that seeks to continue something that you are doing, and not involving something that you propose to do.

Mr. EISEN. Essentially.

Mr. ELDRED. This application was definitely amended at the hearing on October 18, 1941.

Mr. FOSTER. Right.

Mr. ELDRED. It was definitely amended, to a certain pre-
497 scribed area.

Exam. McGRATH. Are you amending the application again, now, counsel, to make it the equivalent of an application for a new operation?

Mr. FOSTER. I think that we so amended it at the hearing back in February of 1942.

Exam. McGRATH. And it is to be so understood here now, is it?

Mr. FOSTER. Yes, sir; that is correct. I think it was so amended, back at that time.

Mr. EISEN. And in October, 1942, when the oral argument was had, it was definitely determined at that time that it was an interim operating application—as indicated by pages 374 and 375 of the stenographic transcript.

Mr. ELDRED. I do not understand, Mr. Examiner, how the application can be amended at this late date.

Mr. FOSTER. The gentlemen are laboring under a misapprehension. We are not asking for any further amendment.

Mr. EISEN. Well, as far as the record itself is concerned, up to the present time, it indicates that Mr. Foster has admitted that it is an interim operating application.

Exam. McGRATH. Now, just a moment. Let us understand first: what is the situation with respect to the grandfather feature of the application?

Mr. FOSTER. As to the grandfather feature——

498 Exam. McGRATH. Have you abandoned that?

Mr. FOSTER. Yes; Mr. Examiner, that has been abandoned, and it now rests upon convenience and necessity.

Exam. McGRATH. Very well. Now then, let us get it definitely on the record as to just what you are asking for in this proceeding. What ports are you seeking authority to serve—specifically, now?

Mr. FOSTER. We are seeking authority to serve from Buffalo, New York, to Duluth, Minnesota, and Lake Michigan ports as far south as Milwaukee, Wisconsin.

Mr. EISEN. From Buffalo?

Mr. ELDRED. Yes; that is what he said. I would like to say this at this time, if the Examiner please, that I have never objected to the amendment of a grandfather application at the hearing, where there has been an omission; but I must very vigorously object to the broadening of the scope of this application, which is under consideration here upon rehearing, and which was very definitely settled and agreed to by the applicants at the previous hearing. There has been no notice to any one that the scope of this application was to be broadened.

Mr. EISEN. Of course, Mr. Examiner, we would also object to any broadening of the scope of the application at this time, but we do no necessarily press for a ruling right here and now by the examiner, if it is not desired to give such a ruling.

Exam. MCGRATH. Well, all that I am trying to do just
498 at the present moment is to get the views of Mr. Foster on the record, as to just what he considers the application to cover.

Mr. FOSTER. Well if your Honor please, it is our position that prior to the time the amended application was filed, the entire situation has changed. The testimony presented at the hearing on February 13, 1942, was on the basis of general convenience, or convenience and necessity primarily between Detroit and the Lake Erie ports, and Detroit and Duluth. On page 34 of the stenographic transcript of the oral argument before the Commission—

Mr. ELDRED. 34?

Exam. MCGRATH. You do not mean that.

Mr. FOSTER. Or rather, I mean to say, page 349. The 9 does not show up in my copy, here.

Mr. ELDRED. I have never understood, if the Examiner please, that you could change the scope of an application upon oral argument.

Mr. FOSTER. Well, we had filed under the grandfather clause for exactly this same territory that was discussed, and we simply amended the application at the commencement of the previous hearing. The routes are shown in Exhibit No. 20 as confined to Automotive Trades.

Exam. MCGRATH. Well now, is it clear to everyone as to what the position of the applicants is, here?

Mr. ELDRED. No; Mr. Examiner; it certainly is not clear
500 to me, as yet.

Mr. EISEN. No.

Exam. McGRATH. The reporter will go back, please, and read the last statement made by Mr. Foster.

(The record was read.)

Mr. FOSTER. And furthermore, Mr. Examiner, we made our position clear on page 449 of the stenographic record of the argument.

Mr. SULLIVAN. 349, you mean, do you not?

Mr. FOSTER. Or rather, I mean to say, on page 349, before the Commission on October 30th last.

Exam. McGRATH. Well, before that, you undertook to be more specific, Mr. Foster. Will you go back and read that also, please, Mr. Reporter.

(The record was further read.)

Mr. ELDRED. Well, now, Mr. Examiner, may we also get straight here with respect to whether we are proceeding at this time under the grandfather application, or under the interim application?

Exam. McGRATH. Off the record.

(Discussion outside the record.)

Exam. McGRATH. Back on the record.

Mr. ELDRED. May counsel answer my question now, if the Examiner please?

Exam. McGRATH. Yes.

501 Mr. FOSTER. We are proceeding at this time under the amendment, the amended application, and not the grandfather application.

Mr. EISEN. He has withdrawn the grandfather application.

Exam. McGRATH. He has abandoned it, he said.

Mr. EISEN. Yes.

Mr. ELDRED. Well, yes; I understand that, but one thing at a time, now. If the grandfather application has been withdrawn——

Mr. FOSTER. That application is still on file, of course, you understand, but we are not pushing it.

Mr. ELDRED. You are not pressing it.

Mr. FOSTER. No.

Mr. ELDRED. All right. In this proceeding today, then, we are proceeding under the public convenience and necessity application, which was an application for authority to continue operations which you started since January 1, 1942.

Mr. FOSTER. Oh, no; I will not admit any such narrow construction of the amended application which was filed on a particular form which was provided by the Bureau of Water Carriers. The applications in a sense are exactly the same. You have got to set forth the same facts as to financial status, and everything else; and I am not saying that because it was on that particular form, it is an interim application. It is an application based on public convenience and necessity.

502 Mr. Eldred. If the Examiner please, I note, in th amendment to the original application, on page 2, unde Description of Routes, it states: "Between Detroit, Michigan, an Cleveland, Ohio, Detroit, Michigan, and Buffalo, New York, an between Buffalo, New York, and Cleveland, Ohio." I see nothin in there about any other ports at all.

Mr. Foster. Exhibit 20 covers the other ports, your Honor, I stated before.

Exam. McGrath. What other ports do you mean, now; othe ports on Lake Erie?

Mr. Foster. No; Duluth, primarily.

Exam. McGrath. Well, what is the position of the oppositio now—that there is no issue before us here with respect t Duluth

Mr. Eldred. Right.

Exam. McGrath. Is that the position?

Mr. Eldred. That is correct, Mr. Examiner. The applicatio as filed with the Commission, plainly states the territory involve

Mr. Eisen. Mr. Examiner, my understanding of an applicatio or any other pleading in a proceeding such as this, or in any leg proceeding, is that it is supposed to clearly define the issue and that all parties are bound by such pleadings. Now th Commission has already found in its decision as to wha 503 the applicants have asked for in their application. says that, right on the first page, in the first paragraph of the decision. Now I do not understand that it is proper o permissible for an applicant to come into a hearing of this so and endeavor to broaden the scope of the authority sough merely by making the statement that that is what he desire without giving appropriate notice to all interested parties, with out notifying the Commission and the other parties through th medium of an appropriate application.

Exam. McGrath. Well, I do not think that it would b broadening the scope of the application, to include Duluth.

Mr. Eldred. O, yes; indeed, Mr. Examiner. It would be en tirely different operation, over a different lake, and covering different territory.

Mr. Foster. The application, if your Honor please, wa amended to cover irregular routes without any objection, wit all of these gentlemen present, I believe, with the possible excep tion of Mr. Sullivan, as indicated by page 116 of the stenographi transcript—or page 117.

Mr. Lewis. I was not present.

Mr. Foster. You were not present?

Mr. Lewis. No; I was not—do you mean, at Chicago?

Mr. Foster. No. I am talking now about the original hearing

Mr. LEWIS. Oh!

Mr. FOSTER. On February 13, 1942.

504 Mr. LEWIS. No; I was not there; I was not at the original hearing.

Mr. FOSTER. But you were at the adjourned hearing; you were here?

Mr. LEWIS. Was I?

Mr. FOSTER. Yes.

Mr. LEWIS. At the adjourned hearing?

Mr. FOSTER. Yes.

Mr. LEWIS. That may be true.

Mr. EISEN. Well, Mr. Examiner, that was an amendment specifically amending the grandfather application; and if you will note on pages 117 and 118 of the stenographic transcript, you will observe that Mr. Eldred said exactly what he did today, that he never objects to the extension of a grandfather application; and I believe that we all of us felt the same way, that if the applicant could prove grandfather rights, we would have no objection to any territory within the scope of his grandfather rights because the statute specifically grants that guarantee to an operator, of the continuance of operations that were conducted on the grandfather date. But what is being done here today, now, or what is being sought to be done here, is something entirely different, and that is to enlarge the scope of a public convenience and necessity application as a new application. I think that the record itself, and the application itself, are ample in and of themselves to dispose of that
505 matter. I do not see any need for us to further argue it here.

Mr. SULLIVAN. Your Honor, I am just raising the point of fundamental right, in the matter of procedure, which requires, in the case of these applications, a form of notice to be sent to the parties named in the application. The notice that I have before me here purports to cover the traffic intended to be sought by the applicants. The ports named are the same as those read off by Mr. Eldred, from the application.

Mr. ELDRED. The decision.

Mr. SULLIVAN. Or, the decision. There is no reference to any port outside Lake Erie, other than Detroit.

Mr. FOSTER. May I inquire if that is the original notice, or the notice that was sent out in connection with the amended application?

Mr. SULLIVAN. That, I am told by Mr. Eisen, was sent out in connection with the amended application, although I may have to stand corrected on that, if the warrants it; but Mr. Eisen

tells me that this is the one that went out originally, in connection with the amended application.

Mr. Foster. What is the date?

Mr. Sullivan. There is no date on it. That is why I cannot be any more dogmatic about it.

Exam. McGrath. Off the record.

(Discussion outside the record.)

Exam. McGrath. Back on the record. I will say at this
506 point, gentlemen, that the Examiner is of the view that the objections raised by the gentlemen on the other side here, seem to be unsound, so far as the Examiner's understanding of the applications is concerned. However, Mr. Foster, you may proceed to present your testimony as you have prepared it, and also develop, if you can, the fact that the application has the scope which you are contending it has—that is, as between Detroit and Duluth.

Mr. Foster. Well, if the application does not have that scope, we wish at this time, if the Examiner please, to move formally that it be amended to have that scope, for the transportation of commodities, including automobiles, between Detroit, Michigan, and Lake Erie ports, and Detroit, Michigan, and Lake Superior ports.

Mr. Eisen. Well now, I am certainly going to object, Mr. Examiner, to any amendment to the application being permitted to be made at this time, to change its scope from that which it had when it was originally filed. Exhibit No. 27 now of record—I believe that is the correct number of the exhibit—specifically shows the commodities that the applicant handled in the past; and I think, under your own questioning, the record clearly shows the specific commodities that were so handled in the past. Those were the only commodities that were covered by the grandfather application. That was the only proof that they submitted, and
507 the Commission has ruled on that particular transportation as being exempt transportation, as shown by the testimony in this record. Now if the applicant has changed its method or scope of operation since that date, it falls into the category discussed by the United States Supreme Court in the Maher case, and it cannot be considered under a grandfather application.

Mr. Foster. We are not considering it under the grandfather application.

Mr. Eldred. Well, if the Examiner please, if an applicant is going to be permitted to come in at the hearing with a new service application, and broaden the scope of its application, why, then certainly the protestants are never going to know where they are. A great many carriers will not appear, and then later they will

find out that they have a vital interest in the application. I have never yet been in an application proceeding, involving an application for new service, where the broadening of an application such as this has been permitted.

Mr. Foster. You say, at the hearing.

Mr. Eldred. Right.

Exam. McGrath. Well, the Examiner has stated his position. Will you read the statement made by the Examiner again, please, Mr. Reporter.

(The record was read.)

Exam. McGrath. It has not been made clear as yet to the Examiner that the original application, as amended, relates to
508 the transportation of automobiles between Detroit, Michigan, and Duluth, Minnesota, or other ports on Lake Superior.

Mr. Foster. It related to the transportation of other commodities.

Exam. McGrath. Yes.

Mr. Foster. Not automobiles.

Exam. McGrath. Yes, and as the Examiner understands it, the present proceeding relates entirely, or primarily at least, I will say, to the transportation of automobiles, or motor vehicles.

Mr. Foster. And other commodities.

Exam. McGrath. And other commodities?

Mr. Foster. Yes.

Mr. Eisen. Well then, may I inquire, do I correctly understand——

Exam. McGrath. Just a minute.

Mr. Eisen. Pardon me.

Exam. McGrath. What other commodities, counsel?

Mr. Foster. Well, such as furniture, for example, when transported with automobiles, or any other commodity when transported with automobiles; anything that is covered, that is not a wholly exempt commodity.

Exam. McGrath. I see.

Mr. Sullivan. What about package freight?

Mr. Foster. Package freight as such we are not claiming.

509 Mr. Eldred. Now, if the Examiner please, may I call your attention to Exhibit B-1 to the amended application, which purports to show the commodities which are asked for; and the only commodities which are mentioned there are motor vehicles.

Mr. Eisen. Under the interim or public convenience and necessity application.

Mr. Eldred. Yes.

Mr. EISEN. And I understood that was the only thing that wa to be considered here today, in view of Mr. Foster's own state ment that he is not pressing the grandfather rights here today.

Exam. MCGRATH. Do you have anything further that you wis to say on that point, Mr. Foster?

Mr. FOSTER. No.

Exam. MCGRATH. Are there any further questions of Mr McCarthy?

Mr. FOSTER. Yes. What is the state of the record, please, Mr Reporter? Is there a question pending, or what?

(Question read.)

A. Yes, sir.

By Mr. FOSTER:

Q. Now, Mr. McCarthy, I will ask you whether or not thes companies are presently operating under temporary authority i the transportation of motor vehicles and grain when transporte on the same vessel at the same time.

A. Yes, sir.

510 Q. And they have been so operating since last summer is that correct?

A. Yes, sir.

Mr. FOSTER. I believe that is all.

Exam. MCGRATH. Cross-examine.

Mr. EISEN. I have just two questions, if the Examiner pleas to clarify the change in the situation of the applicants as betwee today, and the same time of the last hearing, if I may.

Cross-examination by Mr. EISEN:

Q. Mr. McCarthy, on page 51 of the record the Examiner aske you the following questions, to which you made the followin answers:

"Q. Mr. McCarthy, you have testified that all your vessels hav been refitted for the carriage of automobiles.

"A. That is right.

"Q. I take it from that, that they are not suitable for carryin bulk cargoes.

"A. No, not without some reconverting of them back to thei original condition."

Now I want to ask you this question: there has been a chang in that situation to the extent that your boats are now bulk carg boats, and cannot carry automobiles as heretofore unless the are reconverted back; is that right?

A. Except on the top deck.

511 Q. Oh, yes.

A. Yes, sir.

Q. But there has been that change.

A. Yes, sir.

Q. All right. Now on pages 189 and 190 of the record Mr. Foster asked you—I presume referring to your operations other than in the transportation of automobiles—"In other words, you were operating that vessel about as nearly as one could as a tramp steamer?" Then there was an objection, and you said, "Yes."

A. What vessel was that?

Q. The vessel that you were transporting bulk freight in.

A. Oh, yes.

Q. That is correct, is it not?

A. Yes, sir. That was the Ingalls.

Q. And then on page 190 of the transcript, you defined a tramp steamer as follows: "A tramp steamer would be—you call a tramp steamer one that is not assigned to any port, to any particular and definite trade, working particularly for one shipper or one or two shippers, but you might even get horse manure if you got the right rate and carry it and be glad to have it, or stones, or bulk commodities suitable for dropping into open hatches and lifting out again. As a matter of fact, you could carry steel on that boat, package steel, but there was none offered and we couldn't get any."

Now, is your operation at the present time other than
512 automobiles any different from that?

A. We are operating at the present time more or less under the ODT.

Q. I understand, but——

A. (Continuing.) And our commodities, the commodities that we carry, have got to be approved by the ODT, or at least have got to be regulated by the.

Q. Well, other than by reason of any ODT regulations, are you operating any differently? In other words, are you assigning steamers to any particular port, or operating a regular run on schedules?

A. We go by Detroit with a shipment for Buffalo.

Q. You go by Detroit?

A. Yes, sir; and we stop here if there are automobiles to be picked up and taken on to Buffalo.

Q. But you still run your irregular so-called tramp service, do you not?

A. Wherever there is grain, at whatever port the grain originates, on to whatever destination it is assigned; but it is not perhaps as broad, as to the "tramp" end of it, as was originally asked, at that time.

Q. The only difference, then, is the difference that may be necessitated by the ODT regulations; is that correct?

A. Yes, sir.

Mr. EISEN. That is all.

513 By Exam. McGRATH:

Q. To what ports do you expect or contemplate handling automobiles in these vessels that have been converted for the handling of iron ore, or do you not intend to use them for that purpose?

A. Yes, sir. Up until the present time, the vessels that have been converted to carry ore—that is, two of the vessels that have been converted to carry ore are still in the grain trade, with the permission of the government authorities, and we can carry automobiles from Detroit to Buffalo on those ships.

Q. Carrying grain?

A. How?

Q. Carrying grain?

A. Yes, sir; or we could carry from Detroit to Duluth. We have rates in effect now, and have had since January of 1941.

By Mr. SULLIVAN:

Q. Rates on automobiles?

A. Yes.

Q. Only?

A. On automobiles only.

By Exam. McGRATH:

Q. Well, is it the purpose to use those vessels intensively this season for the carriage of ore?

A. Yes.

Q. Those two vessels that you have referred to?

A. If we are required to do so—whatever the ODT and the War Production Board insists on our doing.

Q. Well, would it be possible to say what ports those
514 vessels would be operated to, if they carried ore?

A. Duluth would be part of the ore shipments and part of the grain shipments, but there are more ports from which ore is shipped than from which grain is shipped. Could I add something?

Q. Go ahead.

A. There are two ports particularly where grain is shipped from, as far as Lake Superior is concerned, and they are Port Arthur and Duluth. There is some grain, of course, that is shipped from Lake Michigan ports, but we have not carried any of that this year, or last year either, except one cargo last year.

Mr. FOSTER. I think perhaps I can clear that up, if your Honor please, if I may ask Mr. McCARTHY just one question.

Exam. McGRATH. Go ahead.

By Mr. FOSTER:

Q. Both Cleveland, Ohio, and Buffalo, New York, are ore receiving ports; is that correct, Mr. McCarthy?

A. Yes.

Q. I will ask you to state whether or not, if you were certified as an ore carrier and required to carry ore, it would be possible for you to schedule your vessels to Buffalo and Cleveland, and to likewise carry automobiles on the decks of those vessels, along with the iron ore?

A. Yes, sir.

Q. The ODT permitting.

A. Yes, sir.

515 Mr. FOSTER. I think that clears it up.

By Exam. MCGRATH:

Q. But the ODT would have to pass on that?

A. Yes.

Q. That is, you would have to obtain permission from the ODT?

A. Yes.

Exam. MCGRATH. Are there any further questions on cross-examination?

Mr. ELDRED. Just one question.

By Mr. ELDRED:

Q. Mr. McCarthy, if you were transporting automobiles at the same time you were transporting ore, you would slow up your transportation of ore, would you not?

A. Yes, sir.

Mr. ELDRED. That is all.

Mr. EISEN. Just one more question, please.

By Mr. EISEN:

Q. Are any of the ore carriers, Mr. McCarthy, to your knowledge, carrying automobiles on their spar decks to Buffalo?

A. They are not permitted to do so at the present time, as I understand it.

Q. And none of them are?

A. No, sir.

Mr. EISEN. Thank you.

Exam. MCGRATH. Are there any further questions of the witness on cross-examination? (No response.) I have just a few questions to ask you, Mr. McCarthy, for the purpose of

516 clarification.

The WITNESSS. Yes, sir.

By Exam. MCGRATH:

Q. At the expense, possibly, of some repetition, Mr. McCarthy, I would like to ask you to make clear in the record as to the ports from and to which automobiles have been transported by the applicants since the last hearing.

A. Only from Detroit, Michigan, to Buffalo, New York.

Q. Now you spoke about the prospect of receiving some additional traffic this season from a common carrier trucker, as I understood it.

A. Yes, sir.

Q. You did not make that just entirely clear to me, as to what the nature of that traffic will be.

A. Army vehicles—the same kind of vehicles that the truckers pick up at the various automobile plants that make this army equipment, and transport it.

Q. Under its own power?

A. Pardon me?

Q. Do they transport it under its own power?

A. No, sir; on trailers.

Q. On trailers?

A. Yes, sir. There is some of it, that is, of course, that is transported under its own power by the drive-way method. They are a common carrier, and our rates are published in connection with the carrying of army vehicles with grain,
517 so that we can handle them with any certified public carrier.

Q. And from and to what ports do you propose to carry that traffic?

A. Detroit, Michigan, to Buffalo, New York, and destinations beyond.

Q. Detroit to Buffalo?

A. Yes, sir.

By Mr. FOSTER:

Q. For final destination beyond?

A. Yes.

By Exam. MCGRATH:

Q. Well, I am concerned here only with the water carriage.

A. I understand. What ports, you said?

Q. Yes.

A. Detroit to Buffalo.

Exam. MCGRATH. That is all I have. Are there any further questions of the witness on cross-examination? (No response.) Is there any redirect examination, Mr. Foster?

Mr. FOSTER. None.

Exam. MCGRATH. If not, you are excused, Mr. McCarthy.

The WITNESS. Thank you.

(Witness excused.)

Exam. MCGRATH. Call your next.

Mr. FOSTER. Mr. Brennan.

M. J. BRENNAN recalled.

518 Exam. MCGRATH. Mr. Brennan, you were sworn at the prior hearing, were you?

The WITNESS. Yes, sir.

Exam. MCGRATH. You understand that you are still testifying under that oath.

The WITNESS. Yes, sir.

Exam. MCGRATH. Go ahead.

Direct examination by Mr. FOSTER:

Q. Your name is M. J. Brennan?

A. Yes, sir.

Q. Mr. Brennan, are there a large number of motor vehicles of various types being manufactured at the present time by the automobile companies?

A. I can only speak for Chrysler. We are manufacturing trucks at the present time for the army.

Q. I take it, Mr. Brennan, you would not want to go into detail with respect to the type of trucks, or the valume, or anything of that sort, would you?

A. Oh, no.

Q. That being a military secret.

A. Right.

Q. But they are being manufactured?

A. That is correct.

Q. And they are, if the army so desires, available for water shipment; is that correct?

519 A. Yes, sir.

Q. Do you know of your own personal knowledge as to whether or not any of them were shipped by water last year?

A. Yes; there were some.

Q. Approximately how many?

A. Around 1,000.

By Exam. MCGRATH:

Q. Shipped on the Great Lakes?

A. Yes, sir.

By Mr. Foster:

Q. Where?

A. Between Detroit and Buffalo.

Q. Were some of the motor vehicles which the Automotive Trades Steamship Company shipped, manufactured by Chrysler?

A. Yes.

By Mr. EISEN:

Q. You mean, I take it, which were transported by the Automotive Trades Steamship Company.

A. Yes.

By Mr. FOSTER:

Q. You testified, Mr. Brennan, in the original case that in your judgment the service of the vessels of these applicants would be needed upon the resumption of normal operations on the Great Lakes, I believe; is that correct?

A. Yes, sir.

Q. Applicants' Exhibit No. 33, which was received in evidence here this morning, shows that since the time of the last hearing 19 of the vessels of the various protestants are no longer available for the transportation of automobiles, all of those
520 vessels having formerly been used in that service. Would you say that, with that condition existing, there will be a need for the service of the vessels of the applicants in this case?

A. Oh, very much so; yes, sir. It looks like it is going to be a very serious situation.

Q. In your judgment, Mr. Brennan, would that need include not only Lake Erie ports, but Lake Superior ports as well?

Mr. ELDRED. Now, if the Examiner please, I am going to object to that question. The scope of this application has been defined as being between Detroit and Lake Erie ports, and I therefore respectfully request that the testimony introduced in this proceeding, be confined to that particular territory.

Exam. MCGRATH. Making your answer apply to the Lake Erie ports, Mr. Brennan, what is your answer to that question?

The WITNESS. Give me the question again.

Mr. FOSTER. Read it, please.

(Question read.)

By Exam. MCGRATH:

Q. What is the fact as to the Lake Erie ports?

A. It would.

By Mr. FOSTER:

Q. It would include those?

A. Yes, sir.

Mr. FOSTER. Now, if the Examiner please, I also wish to go into Lake Superior. I think that the protestants have opened up the entire picture. Our amendment in the previous
521 hearing goes to the entire scope of operations on the Great Lakes; and our testimony as to the actual scope of operations on the Great Lakes, in the original hearing—or rather, at the adjourned hearing last February, went to everything except Lake Michigan and Lake Superior.

Exam. MCGRATH. Well, your testimony, Mr. Foster, as I recall it, with respect to lakes other than Lake Erie, related to commodities other than automobiles.

Mr. FOSTER. I am referring to the necessity for transporting automobiles to the other lakes.

Exam. MCGRATH. I understand, but the understanding of the Examiner is that the application is not of sufficient scope to embrace a request for authority to transport automobiles on Lake Superior.

Mr. FOSTER. I wish to make it very clear on the record, if the Examiner please, that it is our contention that the amendment at the February 13th, 1942, hearing did sufficiently broaden the application to include that, and protestants offered testimony, by reference, covering the entire scope of operations at that time, and did not raise this objection that they are raising here today.

Exam. MCGRATH. All right; you may answer the question, then, with that understanding.

A. Well, we definitely do ship to ports on Lake Superior and Lake Michigan, and we do need that service; and under
522 the presently existing conditions, with the number of boats that have been assigned to other services, we feel that there will be very definitely a lack of sufficient vessels to take care of the Lake Superior and Lake Michigan traffic.

By Exam. MCGRATH:

Q. During this coming season, do you mean——

A. No.

Q. Or this present season?

A. No, sir; I mean when we get back to the manufacturing and shipping of automobiles and trucks.

Q. For civilian use?

A. Yes.

Q. General civilian use.

A. That is correct.

By Mr. FOSTER:

Q. In your opinion, Mr. Brennan, is there a need for this transportation service even at the present time, with the limited present production of motor vehicles as compared with normal peacetime operations?

A. Well, my opinion is that the army could well afford to be using water transportation in order to save box cars, which are becoming more scarce every day.

Mr. FOSTER. That is all.

Exam. MCGRATH. Cross examine.

Cross examination by Mr. EISEN:

Q. Mr. Brennan, will you tell us, please, approximately how many of these army trucks, or automobiles, you are
523 shipping by water per day, or per week?

A. Now?

Q. Yes.

A. Why, right at this very moment I do not know of any that are moving.

Q. You understand, do you not, that the applicants here have temporary authority to transport automobiles for the duration?

A. Why, I don't know whether it is for automobiles, or just for trucks. I couldn't say. I do know that they have it for trucks.

Q. Do you have any information other than that which you testified to at the last hearing concerning what the situation will be, when you go back again into the production of commercial automobiles, or when you will go back into the production of commercial automobiles?

A. No, sir; I have not. We will not go back, of course, until after the war is over.

Q. You have no idea, then, or no notion at this time, as to what the situation will be at that time?

A. No.

Mr. EISEN. That is all.

Exam. MCGRATH. Are there any further questions on cross examination?

Mr. LEWIS. Just one question.

By Mr. LEWIS:

524 Q. Mr. Brennan, have you a break-down of the number of army vehicles that have been carried during the past year by the various available vessels over the lakes?

A. No.

Q. You do not intend to testify here, then, do you, that the applicants—or that the vessels operated by the applicants were the only ones that have carried such vehicles?

A. Give me that again.

Exam. MCGRATH. Read the question, please.

(Question read.)

A. No, sir; I do not. I believe that there was one other company, that carried some of them.

By Mr. LEWIS:

Q. What other company do you refer to?

A. I think it was the——

Q. Great Lakes?

A. The Great Lakes Transit Corporation. Their boats are all gone now, by the way.

Q. Well, is it not a fact that the Chrysler Corporation has shipped vehicles across the lakes over the Detroit & Cleveland?

Mr. EISEN. Last year.

The WITNESS. Pardon me?

By Mr. LEWIS:

Q. Last year, 1942.

A. Army vehicles?

Q. Yes.

A. I am sorry, but I wouldn't be able to say definitely as to that.

525 Q. You would not say that they had not, would you?

A. No.

Mr. LEWIS. That is all.

Exam. MCGRATH. Are there any further questions on cross examination?

Mr. ELDRED. Yes.

By Mr. ELDRED:

Q. Mr. Brennan, do you see any difference in the transporting of army trucks on the topsides of freighters, and transporting them on flat cars?

A. No, sir; I don't see any difference.

Mr. ELDRED. Thank you.

By Mr. SULLIVAN:

Q. Mr. Brennan, you have expressed your view as to the serious situation that will confront lake traffic at the termination of the war.

A. Yes.

Q. And you have stated, my client has lost all 14 of its ships by government requisition.

A. Yes.

Q. Now supposing, at the conclusion of the war, that my client should buy 500 ships of the same type it has lost. That would correct the situation pretty well on the Lakes, would it not?

A. Why, if they were the right type of ships, I would say that it would go a long way toward doing so; yes, sir.

Q. I mean, the same type as they lost.

A. Yes.

526 Q. Or supposing that they only bought 300 ships. The situation would still be very favorable, would it not?

A. Yes.

Q. But the fact of the matter is, you do not know at the present moment what the post-war program is going to be, do you?

A. Well, we anticipate, of course, that there will be a very great demand for automobiles and trucks at that time.

Q. I am not talking about that, Mr. Brennan. I am talking about the lake transportation situation. You do not know at this time what that program is going to be, do you?

A. No, sir; I do not.

Mr. SULLIVAN. That is all.

A. (Continuing). I am merely judging it from the present conditions, and what the conditions have been in the past; that is all.

Exam. McGRATH. Are there any further questions on cross-examination? (No response.) Have you any questions on redirect, Mr. Foster?

Mr. FOSTER. None.

Exam. McGRATH. That is all.

(Witness excused.)

Exam. McGRATH. Next witness.

Mr. FOSTER. Mr. Rivett.

Exam. McGRATH. Has this gentleman testified before?

Mr. FOSTER. Yes.

527 Mr. SULLIVAN. These are his regular witnesses, your Honor.

Exam. McGRATH. You testified previously under oath, did you?

Mr. RIVETT. Yes, sir.

Exam. McGRATH. You understand that you are still testifying here under oath?

Mr. RIVETT. Oh, yes.

Exam. McGRATH. That is to say, you were sworn at the prior hearing.

Mr. RIVETT. Yes, sir.

Exam. McGRATH. And the oath which you took at that time, still applies.

Mr. RIVETT. I so understand it.

WILLIAM H. RIVETT recalled:

Direct examination by Mr. FOSTER:

Q. Your name is William H. Rivett.

A. Yes, sir.

Q. Mr. Rivett, is the Hudson Motor Car Company manufacturing any motor vehicles at the present time?

A. No.

Q. It is not?

A. No, sir.

Q. You testified back in February of 1942 in this proceeding, I believe—in this same case.

528 A. Yes, sir.

Q. Now since that time, Mr. Rivett, it has developed that some 19 ships that were formerly engaged in the transportation of automobiles on the Great Lakes are no longer available for that purpose, for the purpose of transporting automobiles.

A. Yes.

Q. In your opinion as traffic manager of your company——

A. Assistant traffic manager.

Q. Or rather, as assistant traffic manager, I should say, of your company, will the service of the ships of the applicants herein be needed upon the resumption of automobile traffic on the Great Lakes?

A. In my opinion they will be needed; yes, sir.

Q. I take it that you have no present knowledge as to the possible movement of motor vehicles by the armed services at the present time, have you?

A. No, sir.

Mr. FOSTER. That is all.

Exam. MCGRATH. Cross-examine.

Cross-examination by Mr. EISEN:

Q. Mr. Rivett, do you have any direct personal knowledge of when your company will resume production?

A. Of commercial automobile vehicles?

Q. Yes.

A. No.

529 Q. Or do you have any direct personal knowledge as to how many units your company will produce when it does resume such production?

A. No.

Q. Do you have any personal knowledge of what the transportation needs of your company will be, with respect to the number of ships, or the carrying capacity of such ships on the lakes when your company does resume commercial production?

A. No definite information.

Q. That is what I say.

A. No.

Mr. EISEN. That is all.

By Mr. ELDRED:

Q. Mr. Rivett, have you ever used the service of the applicants from any other port or ports except those on Lake Erie?

A. None that I am able to recall to mind just at the present moment; no, sir.

Mr. ELDRED. That is all.

Exam. MCGRATH. Are there any further questions on cross-examination?

Mr. SULLIVAN. Yes; please.

By Mr. SULLIVAN:

Q. Mr. Rivett, do you know what the post-war shipping program will be upon the Great Lakes at the termination of the war, if, as and when the war is brought to a termination?

A. Why, I wouldn't be able to say definitely as to that
530 at this time; no, sir; but we certainly do anticipate going back into the production of automobiles.

Q. I am now inquiring, Mr. Rivett, merely as to whether or not you know anything about the lake transportation conditions, about what the lake transportation conditions will be at the termination of the war.

A. Why, not definitely; no, sir; but apparently there will not be an abundance of vessels available, considering the fact that a number of ships have been assigned to other services.

Q. Well, do you know what those companies whose ships have been taken, will do when they resume operation?

A. No.

Q. Well then, not knowing what is going to be done, how can you competently express an opinion as to whether or not the service of the McCarthy Steamship Company will be needed at the termination of the war for the carriage of automobiles?

A. Why, I can only base my opinion on what happened the latter part of 1941, when there were not enough vessels available to move the cars off of the docks.

Q. Exactly. That was in 1941.

A. Yes, sir.

Q. And you do not know how many ships my client, for example, may put back into service?

A. No.

Q. And you do not know what the government may do
531 in aid of transportation on the Great Lakes, do you?

A. No.

Mr. SULLIVAN. That is all.

Exam. MCGRATH. Are there any further questions on cross-examination? (No response.) Is there any redirect examination?

Mr. FOSTER. Yes.

Redirect examination by Mr. FOSTER:

Q. Mr. Rivett, your company does definitely plan on resuming the manufacture of automobiles after the war is over, does it not?

A. Yes, sir.

Q. And you of course could not possibly know what might be in the mind of Mr. Sullivan's client, with respect to its plans after the war, could you?

A. Not very well.

Mr. FOSTER. That is all.

Exam. MCGRATH. You are excused.

(Witness excused.)

Exam. MCGRATH. Next witness.

Mr. FOSTER. Mr. Rogers.

Mr. ELDRED. Pardon me, if the Examiner please, but I would like to ask one further question of Mr. Brennan, if I may.

Exam. MCGRATH. All right.

Mr. ELDRED. To save time, he may answer it right from where he sits, if that is agreeable.

532 Exam. MCGRATH. Go ahead.

Mr. ELDRED. Mr. Brennan, to your knowledge, did you ever use the boats of the McCarthy Steamship Company to ports other than those on Lake Erie?

Mr. BRENNAN. To ports other than on Lake Erie?

Mr. ELDRED. Yes.

Mr. BRENNAN. No; I don't think so.

Mr. ELDRED. That is all I had. Thank you very much.

Exam. MCGRATH. Are there any further questions of Mr. Brennan? (No response.) All right.

Mr. FOSTER. Mr. Rogers.

Exam. MCGRATH. You have not previously testified in this proceeding, have you, sir?

Mr. ROGERS. No.

E. B. ROGERS was sworn and testified as follows:

Direct examination by Mr. FOSTER:

Q. Mr. Rogers, will you give your full name to the reporter, please.

A. E. B. Rogers.

Q. With what company are you connected?

A. Pontiac Motor Division of the General Motors Corporation, Pontiac, Michigan.

Mr. LEWIS. I did not get that.

Exam. MCGRATH. Read it, please.

533 (Answer read.)

By Mr. FOSTER:

Q. Where do you reside?

A. Pontiac, Michigan.

Q. Your position with the Pontiac Division of General Motors?

A. Traffic manager.

Q. As traffic manager of Pontiac, do you have a general knowledge of the movement of automobiles over the Great Lakes?

A. Yes.

Q. There have not been many pleasure automobiles moving over the Great Lakes since 1941, have there?

A. No, sir.

Q. Now during the year 1941 what were the principal com-

panies that were transporting automobiles on the Great Lakes by water?

A. Well, we used the Detroit & Cleveland Navigation Company; Great Lakes Transit; the MAT Line—Minnesota-Atlantic; and probably several others that I am not able to recall to mind right now. I can tell them, if you will name them for me, whether we have used them or not.

Q. Nicholson-Universal?

A. Yes; we used them.

Q. Was 1941 a rather large year in the manufacture of automobiles?

A. In the Pontiac Division it was a heavy year.

Q. And the industry in general had a large year in 1941, did it not?

534 A. Why, I wouldn't be able to answer that of my own personal knowledge, but generally speaking, I think it did have; yes.

Q. In your opinion, it did have?

A. Yes, sir.

Q. Now, Mr. Rogers, were the transportation facilities which were available in 1941 sufficient to take care of all of the needs of the Pontiac Motor Car Company in the transportation of automobiles by water over the Great Lakes?

A. Not out of Cleveland and Buffalo; no, sir; and also at some of the Lake Superior ports, like Duluth, Minnesota, there was quite some delay.

Q. Now, upon the resumption of the production of automobiles, can you say whether or not it is the intention of your company to again use water facilities?

A. Yes.

Q. It is their intention so to do?

A. Yes, sir; it is.

Q. Does your company at the present time manufacture motor vehicles for any branch of the army?

A. No, sir; no motor vehicles at all, in our division.

Q. Do you know of your own knowledge whether or not other divisions of the General Motors Corporation do manufacture motor vehicles?

A. Any answer that I might make to that question would just be hearsay, because I have not seen them.

535 Q. You have not actually seen them?

A. No.

Q. Do you have any knowledge now as to the immediate need for transportation of these army vehicles by water?

A. No.

Q. It has been testified here, Mr. Rogers, as the record will

show, that there were 21 vessels formerly engaged in the transportation of automobiles over the Great Lakes, and which as a matter of fact were so engaged in 1941, which are no longer available for the transportation of automobiles on the Great Lakes. Would you say, from your knowledge of the transportation picture, covering the transportation of automobiles and motor vehicles by water, that the three vessels of the applicants here will be needed for the transportation of automobiles when the manufacture of pleasure cars is resumed?

A. Well, I can only speak from past experience as to that, but I can say that they were very badly needed when we were shipping automobiles, as late as 1941.

Q. And that was with all of the other 21 vessels available; is that correct?

A. I don't know the exact number.

Q. But they were very badly needed in 1941, do I correctly understand you to say?

A. Yes, sir.

Mr. FOSTER. That is all.

536 Exam. McGRATH. Cross-examine.

Cross-examination by Mr. EISEN:

Q. Mr. Rogers, are you personally familiar with when your company will go back into automobile operation—or production?

A. No.

Q. Do you have any personal knowledge of what production your company will engage in, as to units, upon the resumption of production?

A. The number of units?

Q. The number of cars.

A. No.

Q. Do you have any personal knowledge as to the number of boats, or the vessel capacity, that will be required after the termination of the war, to satisfy the needs of your company?

A. No.

Q. Do you have any knowledge as to whether or not the existing carriers will make available to your company sufficient vessels for the carriage of its products?

A. I could not speak, only from past experience.

Mr. SULLIVAN. He has not answered the question.

Mr. EISEN. Read the question and answer, please.

(Question and answer read.)

By Mr. EISEN:

Q. Can you answer yes or no?

A. "No."

537 Mr. EISEN. That is all.

Exam. McGRATH. Is there any further cross-examination?

Mr. ELDRED. Yes.

By Mr. ELDRED:

Mr. Rogers, to your knowledge did the applicants here ever transport motor vehicles from ports other than those on Lake Erie?

A. Not to my knowledge; no.

Q. You have referred to the year 1941. Was not the year 1941 about the best year as far as possible as the general production of automobile equipment is concerned, for a long period of time?

A. In answering that question, I would only be able to speak for Pontiac, sir.

Q. All right.

A. I believe that we had a pretty good record, for some years past, although I do not have the figures with me here, however.

By Mr. EISEN:

Q. If I may ask you right there, what do you mean by "for some years past"?

A. Well, I mean—I think that in the years 1927, 1928, and 1929 we manufactured more cars than ever we have since that time.

By Mr. ELDRED:

Q. But since the year 1930, say, would you say that the year 1941 was your best year?

A. I wouldn't want to try to answer that question without having the figures before me.

Q. However, it was up near the top?

A. Yes.

538 Q. Would you go that far?

A. Yes, sir.

Mr. ELDRED. Thank you, sir.

Exam. McGRATH. Are there any further questions on cross-examination?

Mr. SULLIVAN. I have no questions.

Exam. McGRATH. Are there any questions on redirect?

Mr. FOSTER. None.

Exam. McGRATH. That is all. You are excused.

The WITNESS. Thank you, sir.

(Witness excused.)

Exam. McGRATH. Next witness.

Mr. FOSTER. That is all.

Exam. McGRATH. The applicants rest?

Mr. FOSTER. That is the case for the applicants; yes, your Honor, except for some possible rebuttal.

Exam. MCGRATH. Do protestants have any testimony to offer?

Mr. SULLIVAN. Yes.

Exam. MCGRATH. You may proceed.

Mr. SULLIVAN. Mr. Emblidge.

W. E. EMBLIDGE was sworn and testified as follows:

Direct examination by Mr. SULLIVAN:

Q. State your name.

A. W. E. Emblidge.

539 Q. Your address.

A. 223 Erie Street, Buffalo, New York.

Q. With what company are you connected, and in what capacity?

A. Vice president, Great Lakes Transit Corporation.

Q. How long have you served the company in that capacity?

A. Approximately five years.

Q. And prior thereto you had how long an experience with the company in traffic matters?

A. About 15 or 16 years.

Q. You have prepared a statement, as I understand it, which you wish to put into the record here, respecting the position of your company in this proceeding; is that correct?

A. Yes, sir.

Q. Will you please proceed to make the statement.

A. The position of Great Lakes Transit Corporation in this proceeding is one of opposition to the granting of permanent common carrier rights to the applicants. At the time applicants sought temporary rights the Commission requested an expression from our corporation, and we indicated no opposition because we were then usable to carry all the trucks offered by the army, and, of course, were eager not to interfere in the war effort. We did, however, at that time state that we did not want that consent to be construed as an indication that we would favor a permanent operation by applicants.

The basis of our opposition in this matter is that we do 540 not wish to meet the permanent competition of the applicants when our company resumes its transportation business after the present emergency. All of the fourteen vessels of our fleet were requisitioned by our government in 1942, six of them having been delivered in mid-June, four in mid-July and four about December 1st. We understand that all of those vessels are now at New Orleans or on salt water. However, our corporation has not abandoned its transportation business and

hopes actively to resume when ships become available. None fit for our service is presently procurable.

In the course of a letter to its stockholders dated November 2, 1942, asking for tenders of preferred stock at prices to be fixed by the stockholders—a copy of which letter I have before me here for general inspection—our corporation said:

"Your Board of Directors has determined upon the policy of continuing the corporation in business, if possible, without serious losses, looking to engaging again after the war in a full line package freight operation, as formerly."

Our corporation has operated as a common carrier upon the Great Lakes since 1916 in two branches of service; one from Buffalo, New York, to the western Lake Superior ports and way ports; and the other, from Buffalo, New York, to Chicago, Illinois, and way ports. We did not operate regularly in Lake Michigan in 1942, due to the mandating of four of our vessels to the grain trade by the Office of Defense Transportation.

541 We made our showing to the Commission under application for the continuance of our grandfather rights in Docket W–154, and the Examiner rendered a completely favorable report. The Commission has not as yet acted. It is submitted that our grandfather rights persist and are not lost because of the act of our government in taking our vessels for war purposes. The interruption of our service obviously resulted from causes beyond our control. Upon that point I should like to offer in evidence at this time a copy of a letter from Commissioner Porter to Director Eastman, dated April 24, 1942, to the effect that the interruption of our service as a result of the diversion of four of our ships to the grain trade by order of the Office of Defense Transportation would not work a forfeiture of our grandfather rights in that lake.

Mr. SULLIVAN. Let us have it marked for identification at this time, please, as Protestants' Exhibit No. 35.

(Protestants' Exhibit 35, Witness Emblidge, marked for identification.)

The WITNESS. We respectfully submit that our existing grandfather rights are entitled to protection against the permanent competition of another carrier operating under temporary rights only because former operators are prohibited from engaging in business by a governmental mandate.

We should like to direct attention, by brief reference only, to two cases before the Commission in which this carrier

542 was involved, because in them the Commission passed upon issues relating to the effect of excess competition between water carriers on the lakes. In Nicholson Universal Steamship Company, et al., versus Pennsylvania Railroad Company, et al.,

reported in 203 I. C. C. 637, and affirmed in 206 I. C. C. 563, the Commission denied the prayer of a water carrier for an order compelling the eastern rail carriers to join in joint rates and through rates, for reasons, among others, that existing joint rail and water service was adequate, and that the introduction of a new water line into service might jeopardize existing water lines. In Minnesota-Atlantic Transportation Company—Control—Finance Docket No. 13378, the Commission permitted this carrier to acquire all of the stock of its competitor, Minnesota-Atlantic Transport Company, for the reason that both companies for years had lost money as a result of the competitive operations.

By Mr. SULLIVAN:

Q. When you say "this carrier" you mean, Great Lakes Transit Corporation.

A. That is correct; yes, sir. A witness will follow me with two statistical exhibits.

Mr. SULLIVAN. That is all on direct. I offer Protestants' Exhibit 35 in evidence.

Exam. MCGRATH. Without objection, the exhibit will be received and marked as Protestants' Exhibit 35.

(Protestants' Exhibit 35, Witness Emblidge, received in evidence.)

543 Exam. MCGRATH. Cross-examine.

Mr. FOSTER. Shall I start?

Exam. MCGRATH. Yes. I understood counsel to say that the direct examination of the witness had been completed.

Mr. SULLIVAN. I so stated.

Cross-examination by Mr. FOSTER:

Q. As I understand you, Mr. Emblidge, you say it is definitely the intention of your company to resume the package freight business after the emergency?

A. Yes.

Q. You have no idea at the moment as to how soon you can resume that service, of course?

A. No, sir. We are trying practically daily to get other boats, but there is none of our type available, that we have been able to run into so far.

Q. How long have you been trying to get these other boats?

A. Oh, we have been trying ever since the War Shipping Administration requisitioned our fleet last year.

Q. As you see the picture at the present time, then, you apparently, in order to be able to resume service, are going to be compelled to build new ships; is that correct?

A. Either build or convert. After the war, I feel that there will be a considerable amount of tonnage available, and it will just

be a question of whether the ships can be converted into the type of equipment that can handle that tonnage, or whether
544 it will be better to start in over again and build from scratch. That has not been definitely determined as yet, of course.

Q. The process of building from scratch, as you describe it, is a very long process, is it not?

A. Well, no, sir; I wouldn't say that it was; not too long, at any rate.

Q. How long?

A. Oh, I would say that it would probably take a year to get into operation. Operation with a new fleet, and get it onto the lakes.

Q. How many ships would you expect to build, in that period of one year?

A. Well, I just had in mind that in order to properly conduct our business, the way it was being conducted when we left off, it would require practically the same number of ships as we had when they were requisitioned away from us.

Q. Well, do you contemplate having fourteen ships?

A. Why, we would have to. We did not have any too much equipment before, as a matter of fact. If we had bigger ships, we might be able to cut the number down, that is, but we would have to have something in reserve also, to carry on a million ton package freight business. Over the course of a year, you would have to have sufficient ships available to provide a service that would be in keeping with the tonnage which was offered, and that would satisfy the shippers.

545 Q. Have you discussed with any shipyard the question of building those ships?

A. No, sir; I have not. That would be an operating matter, that would be handled by the Operating Department and the President.

Q. Are you a member of the Board of Directors of Great Lakes Transit Corporation?

A. No.

Q. As far as you know, there have been no plans drawn up for any new ships, have there?

A. Not to my knowledge.

Q. Do you yourself have any idea with respect to what a new ship would cost?

A. No, sir; I have not—at least, nothing definite, that is. That would be up to the operating men, with respect to that. I do know this, however, as testified previously, in connection with the stockholders, that we are going to build equipment; but as to just what the cost of that would be, I would not be able to tell you.

Q. I do not understand that last statement. You say, you have testified previously in connection with the stockholders?

A. Well, I mean, in the statement here.

Mr. SULLIVAN. He is referring to the reference he made a few moments ago.

The WITNESS. There is an exhibit here, or a document,
546 that you can look at, in that connection, if you wish to do so.

Mr. SULLIVAN. He just read from it.

Exam. MCGRATH. An excerpt.

Mr. SULLIVAN. He just read an excerpt from it, yes.

Mr. FOSTER. Well, I have not seen it.

Mr. SULLIVAN. Are you interested in seeing that letter, counsel?

Mr. FOSTER. Yes, I am.

Mr. SULLIVAN. The letter consists of two pages, but the witness only read one paragraph. We presented that, I may say, because we wanted you to see that this declaration of policy for the future was not evolved just for this little case alone. It is dated November 2nd, you will observe.

By Mr. FOSTER:

Q. You have no personal knowledge at all, have you, with respect to how you would go about continuing in business, in line with this policy of acquiring ships?

A. Oh, I do not think that it is such a very difficult problem, myself. The main thing is, we have the rates and we have the routes, and when it comes right down to the matter of physical equipment after the war, I do not think that that will be the major problem. The main thing is to keep intact your rates, and your routes, and your proper differentials, and things like that, and you can, in my opinion, consider the matter of equipment as more or less of a secondary proposition, because I feel that there will be equipment available.

547 Q. Well, now, you stated in your prepared statement that both your company and the Minnesota-Atlantic Transit Line had continuously lost money in the operation of the package freight business.

A. Yes, sir; and that was the purpose of our merger.

Q. Yes. And your company had fourteen ships.

A. Yes.

Q. And it continuously lost money.

A. Yes.

Q. Is that right?

A. Yes, sir; that is substantially correct—since 1934, that is.

Q. Since 1934.

A. Yes, sir.

Q. What was the book value of the fourteen ships?

A. I couldn't tell you that.

Q. Well, had they been written substantially down to where your capital investment in them was small?

A. Well, under the Interstate Commerce Act, we would have to depreciate them, of course, over a period of years. Now, of course, that is all shown by the books, and our auditor is present here today, and he can probably explain that to you better than I can.

Mr. SULLIVAN. He is here.

Mr. FOSTER. Very well, then. Let us just leave it that
548 way. If your auditor is here, that is all right.

By Mr. FOSTER:

Q. Now, you do not know.

A. No.

Q. All right.

A. That is a different department.

Q. And you have no personal knowledge with respect to what it would cost, or what investment would be required to replace those fourteen ships with new ships, have you?

A. No.

Q. Or as to whether it is the plan of your company to replace all fourteen of those ships, or just a few of them, with new ships?

A. Oh, I know that it is the plant of the company, without any question about it, to provide sufficient service to handle the tonnage that is offered us, to be moved.

Q. But you have no idea ——

A. (Continuing.) And that in my opinion, as I testified before, would require somewhere around ten to twelve or fourteen vessels.

Q. Your company never was a serious factor in the transportation of automobiles, was it? It never was a heavy transporter of automobiles, was it?

A. Well, yes, sir—that is, we have always liked the automobile business very much. I do not know just what you would call a serious factor, but in my opinion, when the revenue from automobiles goes up to around half a million dollars per
549 year, why that is a pretty big piece of revenue.

Q. And you had one automobile boat as such, did you not?

A. Yes, sir. We carried the others on the package boats.

Q. During what year did your revenue go up to around half a million dollars from the transportation of automobiles?

A. I think that was around about 1940 or 1941, or along in there somewhere.

Q. Do you recall how many cars you transported either in the year 1940 or the year 1941?

A. Not the exact number.

Q. Approximately?

A. Oh, I would say that we transported—well, I wouldn't want to guess at it, either. I do not have the complete figures with me.

Q. Will your auditor have the figures as to what the revenue of your company was from the transportation of automobiles in 1940 or 1941?

Mr. SULLIVAN. Ask him.

A. Well, you had better ask him that. I do not know whether he will or not.

By Mr. FOSTER:

Q. Where did you get the information that your company received $500,000 of revenue from the transportation of automobiles?

A. Well, because ——

Q. Answer the question.

Mr. SULLIVAN. He is.

A. In this kind of business, you know from your general knowledge of your statement, about what your revenue is. That is just good business, to know about what your tonnage is, and your revenue.

By Mr. FOSTER:

Q. What was the rate on automobiles between Detroit and——

Mr. EISEN. Objection.

Exam. MCGRATH. Let him finish.

Mr. FOSTER. I submit that the question is a proper one, with this line of testimony in the record, with respect to the revenue from automobiles.

Mr. ELDRED. What is the relevancy?

Exam. MCGRATH. What is the relevancy of the rate?

Mr. FOSTER. The relevancy of the rate is that the witness has testified here that they had a revenue of $500,000. Now, I want to know how he arrives at that figure of $500,000 revenue from the transportation of automobiles. That is a lot of automobiles, Mr. Examiner.

Exam. MCGRATH. I think the witness answered once before that he could not tell you the number.

Mr. SULLIVAN. That is what he was trying to tell you.

Mr. EISEN. But this is something else, now.

Mr. ELDRED. This is the rate, that counsel is asking about now.

551 By Exam. McGRATH:

Q. Mr. Emblidge, do you know the number of automobiles that were transported?

A. I wouldn't be able to say offhand, no, sir; but if it is important enough, I could probably dig it up.

Mr. SULLIVAN. If your Honor please, may we be off the record for a moment?

Exam McGRATH. Yes.

(Discussion outside the record.)

Exam. McGRATH. Back on the record.

By Mr. SULLIVAN:

Q. Can you give the revenue figure for the year 1941, Mr. Emblidge?

A. Yes, sir. For the year 1941, taking that one figure, our automobile revenue was $350,000.

By Mr. FOSTER:

Q. Your total automobile revenue?

A. Yes, sir.

Q. Representing how many units?

A. 20,000 units.

Q. Do you know what it was in 1940?

A. In 1940 the revenue was $331,000, representing 23,000 units—that is, for the three lakes combined, Lake Erie, Lake Superior, and Lake Michigan. Apparently I was wrong, in the figure that I gave before. I thought it was $500,000.

Q. You did move automobiles on Lake Erie during the years 1939 and 1940, did you?

A. Yes, sir.

552 Q. On your own tariffs?

A. That is correct.

Q. And you have asked for an extension of your grandfather rights to move automobiles over that route?

A. Yes, sir.

Q. Between Detroit and Buffalo?

A. And all other lake ports where we formerly handled automobiles.

Q. Did you handle any automobiles to Cleveland?

A. From Buffalo to Cleveland?

Q. No. Detroit to Cleveland.

A. No.

Q. And you are not claiming any rights there?

A. No, sir; nothing except what we formerly had, or what we formerly handled, under the grandfather application.

Mr. FOSTER. That is all.

Exam. McGRATH. Are there further questions on cross-examination?

Mr. EISEN. I would like to ask just one question of Mr. Emblidge, predicated on his experience.

Exam. McGRATH. Is this cross-examination?

Mr. EISEN. Why, I don't know whether it is or not, your Honor. I guess perhaps it may be, technically. You may call it that, anyway, as far as the record is concerned.

Exam. McGRATH. All right.

553 By Mr. EISEN:

Q. Mr. Emblidge, predicated upon you past experience in transporting freight on the lakes, would you say that in the future your company could or could not operate efficiently and economically with new or additional competitors in the field?

A. Well, the purpose of the merger referred to was to bring about an operation whereby we would be assured, as nearly as possible, full loads both ways, and certainly if after the war other competition steps in, and the tonnage is again split up among other carriers, the picture will certainly not be any brighter than it was prior to the merger.

Mr. EISEN. That is all.

Exam. McGRATH. Are there any further questions on cross-examination?

Mr. FOSTER. Yes.

By Mr. FOSTER:

Q. When did this merger take place?

A. Well——

Mr. SULLIVAN. I can give you the date.

The WITNESS. It was effective with the 1942 season of navigation, you might say, from an operating angle. Actually went in on January 1, 1942. The Commission decided it, I would say, along about——

Mr. SULLIVAN: November 18, 1941.

The WITNESS. Right.

By Mr. FOSTER:

554 Q. At the time of this merger the Minnesota-Atlantic Transit Line did not have any vessels in the picture at all, did it?

A. Well, does that have anything to do with this?

Q. Certainly.

A. Are we trying that issue here?

Q. You are saying that you merged because you could not operate profitably, and I am now trying to find out why you did merge.

A. Well, if you read the finance case, and get smarted up on it, you can answer your own question.

Q. I am asking you, now, sir. I am asking you, at the time of the merger, if the Minnesota-Atlantic Company had absolutely no vessels to merge in any operation? Is that right, or not?

A. Your are wrong.

Q. All right. What vessels did they have?

A. Well, they owned the "Richardson," that I can think of right offhand here.

Q. Well, but the MAT L[illegible] sold the "Richardson" direct, did it not, so that it was not included in the merger?

A. Well now, there again you are getting into something that I don't understand is any part of the issue here.

Mr. SULLIVAN. It was not included in the merger.

Mr. FOSTER. All right.

Mr. SULLIVAN. We will go along with you that far.

Mr. FOSTER. All right.

Exam. MCGRATH. We would rather have the witness
555 testify, if he can. As I understand it, the witness cannot answer the question.

The WITNESS. No.

Exam. MCGRATH. You are not able to answer that?

The WITNESS. No.

Exam. MCGRATH. Go ahead.

By Mr. FOSTER:

Q. As a matter of fact, Mr. Emblidge, the MAT Line never at any time owned the "Richardson"; that is correct, is it not?

A. I couldn't answer.

Q. Well, you do know as a matter of fact, do you not, that at the time of the merger there between the Minnesota-Atlantic Transit Line and the Great Lakes Transit Corporation, the Great Lakes Transit at that time had eight vessels left; did it not?

A. The Great Lakes?

Q. Yes.

A. At the time of the merger?

Q. It had eight vessels left at the time of the merger; that is correct, is it not?

A. You are wrong.

Q. How many vessels did it have left, then—Great Lakes Transit—at the time of the merger?

A. We started with fourteen.

Q. You started in with fourteen?

556 A. Yes, sir.

Q. And the Minnesota-Atlantic Transit Line at the time of the merger, as it appears from the Finance docket that you have referred to, did not own a single boat of any kind, nature or description, did it?

A. (No answer.)

Q. Can you answer that question, Mr. Emblidge? Is that correct, or not?

A. Well now, let me understand what you are talking about, if I can. Are you talking about the time when the merger was filed—that is, at the time the application for a merger was sent to Washington, or the petition, or whatever you want to call it; or are you talking about the time when the decision came out?

Q. Well, I will ask you what they owned, if anything.

Mr. SULLIVAN. That is—what?

By Mr. FOSTER:

Q. What vessels of any kind, nature or description did they own at the time the application to permit the merger was sent to Washington?

A. Oh, they had their own equipment at that time, but I wouldn't be able to say now just what it was.

Mr. SULLIVAN. If your Honor please, may we be off the record again, just briefly?

Exam. MCGRATH. All right.

(Discussion outside the record.)

Exam. MCGRATH. Back on the record.

557 The WITNESS. I will say that I cannot answer that question. They were operating boats. If a line has boats running up and down the lakes, in competition with you, handling freight, I would say that it is an operator. Now, as to whether they leased them, or owned them, is something else again.

Mr. SULLIVAN. All right.

By Mr. FOSTER:

Q. Well, what boats, if any, did they have running up and down the lakes in competition with you, in the fall, the late fall of 1941, if you know?

A. In the late fall of 1941?

Q. Yes, at the time this merger was first started.

A. Well, as I recall it at the present time, they were operating four boats, and we also had four boats in operation.

Q. In the late fall of 1941?

A. Yes, sir; and then possibly it went to five boats apiece. We have always had, in order to produce the service, an alternate sailing arrangement from the head of the lakes, so that their boats would go out, and our boats would go out, and vice versa.

That was so as to provide, as nearly as we could, a daily service out of Duluth. That was due especially to developing the perishable tonnage, such as butter and eggs, and so forth.

Q. Did the Great Lakes Transit Corporation acquire any vessel properties as a result of this merger?

A. No.

Q. Which merger, as you say, was put through, in order
558 to effect economy.

A. They did not.

Q. They did not?

A. No, sir.

Q. Then just what did they acquire, or just what did they get, as the result of this merger?

Mr. SULLIVAN. Counsel——

A. Well, I——

Mr. SULLIVAN. Just a moment, please. I would like to object to that upon the ground of irrelevancy.

Mr. FOSTER. Oh, no.

Mr. SULLIVAN. The whole thing is set up in Finance Docket 13378; and it certainly is irrelevant here.

Mr. FOSTER. Did you give reference to the citation?

Mr. SULLIVAN. It is not in the published volumes. It is Docket 13378. I can explain, if you want, off the record.

Mr. FOSTER. All right. Off the record, if your Honor please.

Exam. MCGRATH. Off the record.

(Further discussion outside the record.)

Exam. MCGRATH. Back on the record.

By Mr. FOSTER:

Q. As a matter of fact, Mr. Emblidge, prior to the time that this merger took effect, that company had chartered from you certain vessels, had it not?

A. Yes.

559 Q. And at the time the merger was approved, they were operating boats under charter from you, were they not?

A. Yes.

Q. And they had sold their boats prior to that time—or, the owner had sold them, so that they no longer had them available; that is correct, is it not?

A. No, sir; that is only partly correct. They had sold some of the equipment during that period that they were chartering from us.

By Exam. MCGRATH:

Q. By "equipment," do you mean vessels?

A. Yes.

By Mr. FOSTER:

Q. Vessels.

A. Yes.

Q. Well, can you actually tell us when they first chartered those four vessels from you?

A. No.

Q. You cannot?

A. No, sir.

Q. Do you think that your auditor will be able to tell us that, when he comes on a little later?

A. You had better ask him.

Mr. [illegible]SEN. I would like to inquire, Mr. Examiner, as to what is the materiality of all this.

The WITNESS. I don't know.

Mr. FOSTER. They have opened it up, your Honor. The
560 witness has been testifying here as to what they are going to do after the emergency, and what their plans are.

Exam. MCGRATH. That is the understanding of the Examiner. Counsel is merely testing the knowledge of the witness.

Mr. FOSTER. That is correct, Mr. Examiner, with respect to the testimony that he has given on direct.

Exam. MCGRATH. Yes, counsel is cross-examining now on the testimony that the witness gave on direct.

Mr. FOSTER. The witness testified that his company merged with this other company in order to effect economies, and I am now merely trying to find out a little something about that merger.

The WITNESS. Well now, Mr. Foster, is this not true, that if there is a line–A and a line–B, that are operating——

Mr. FOSTER. Just a moment.

Exam. MCGRATH. Let us not argue.

Mr. FOSTER. No.

Mr. SULLIVAN: It is all before the Commission.

Exam. MCGRATH. Are there any further questions on cross-examination?

Mr. FOSTER. That is not in this record at all.

Exam. MCGRATH. Are there any further questions on cross?

Mr. FOSTER. No.

Exam. MCGRATH. Is there anything on redirect, Mr. Sullivan?

Mr. SULLIVAN. Yes, sir.

561 Redirect examination by Mr. SULLIVAN:

Q. Mr. Emblidge, Mr. McCarthy testified that he transported last year on Lake Erie some 950 cars. You also transported cars over that lake during that year, did you not?

A. Yes.

Q. How many?

A. About 900. As a matter of fact, we were transporting them at the time that Mr. Foster telephoned me from Detroit and asked me to wire the Commission that we had no objection to temporary rights being granted to McCarthy to move these government trucks; I told him at the time that, in view of the fact that, with our four boats, we could not move the load, we had no objection to the granting of temporary rights as an aid to the war effort.

Q. Now at that time, Mr. Emblidge, you did not have the free use of your full fleet, did you?

A. No.

Q. Some of your boats had already been moved into the grain trade, had they not?

A. Yes.

Q. Now Mr. Foster, in his cross-examination of you, has sought to indicate here that it might take a considerable length of time to build ships of the type that you might desire. In that interim, as in any interim, would it not be the policy of the company to charter temporarily as a makeshift?

562 A. Oh, yes.

Q. When new ships must be built?

A. Yes, that is correct.

Q. At least, that is your hope?

A. Yes, sir. We intend, just as soon as the war is over, to reestablish the service in some form, shape or manner, at the earliest possible date, because we realize that we will have to get back into it very quickly.

Q. Now, did the MAT Line carry automobiles on the decks of its vessels between Detroit and Buffalo?

A. Well, as I recall it now, they went out of the automobile business on Lake Erie probably three or four years ago; but prior to that time, they did do that; yes, sir.

Mr. SULLIVAN. That is all.

Exam. MCGRATH. Are there further questions?

Mr. FOSTER. Yes.

Re-cross-examination by Mr. FOSTER:

Q. They were not a competitor with you in the transportation of automobiles at the time you merged with them, then, were they?

A. Yes, they were.

Q. I mean, now, between the ports of Buffalo and Detroit.

A. No.

Q. They were not?

A. No, sir.

563 Q. Now, Mr. Emblidge, do you have any idea at all as to who might have any boats that they would charter to you?

A. No.

Q. Do you have any boats lined up at the present time under option for charter?

A. No, sir.

Q. In other words, then, you do not have the remotest idea of where you are going to charter a boat, do you?

A. Well, I wouldn't say, the remotest idea.

Q. Well——

A. Because we know where to go to look for boats when the war is over—yes, sir.

Q. Where can you go, or where will you look for boats that would suit your needs after the war is over?

A. We will go to the people who own equipment that is not being used at the particular time that we are looking for ships.

Q. But you do not have any idea at this time—or rather, do you have any idea, as to who those people might be?

A. Why, no, sir. It might even be the government. They own our vessels, at the present time. They have requisitioned them.

Q. And they are all in salt water now, as you understand it, are they not?

A. That may be true; yes, sir; but then, if they went down the river, once they can still come back up the river again.

564 Mr. FOSTER. I will agree with you there.

Exam. MCGRATH. That is, if they do not go down too far. [Laughter.]

The WITNESS. Providing of course they do not go all the way down; that is true.

By Mr. FOSTER:

Q. But you do not know what would have to be done to those boats physically, to change them back, to fit them for your service, do you?

A. No.

Q. You do not have any idea as to what might be involved there, at all, do you?

A. Oh, well, I do know that they would have to be changed over from a salt water operation, and brought back to the condition that they were in, or as near as possible to that condition, at the time they left the Great Lakes; but I have never seen those vessels since they have been converted and shipped out, down the river.

Q. You mean, as to their whereabouts?

A. Yes.

Q. Except that they are on salt water.

A. Yes, sir. I have not seen them, at any rate.

Mr. FOSTER. That is all.

Exam. MCGRATH. Are there further questions of the witness?

Mr. SULLIVAN. Nothing.

Exam. McGRATH. If not, you are excused.

(Witness excused.)

565 Exam. McGRATH. Have you a short witness, whom we can dispose of before we suspend for lunch?

Mr. SULLIVAN. We have two additional exhibits we would like to put in, your Honor.

Exam. McGRATH. Would you like to put them in now?

Mr. SULLIVAN. Yes.

Exam. McGRATH. Very well. You may call your witness.

Mr. SULLIVAN. Mr. Lyon.

Exam. McGRATH. This witness has not been previously sworn, has he?

Mr. SULLIVAN. No, sir.

J. J. LYON, was sworn and testified as follows:

Direct examination by Mr. SULLIVAN:

Q. State your name.

A. J. J. Lyon.

Q. Your address.

A. 223 Erie Street, Buffalo, New York.

Q. With what company are you connected?

A. Great Lakes Transit Corporation.

Q. In what capacity?

A. General auditor.

Q. How long have you occupied that position?

A. Since January 1, 1942.

Q. Prior to that time what was your occupation?

566 A. Prior to that time I was treasurer of the Minnesota-Atlantic Transit Company.

Q. For how long were you in that capacity?

A. Oh, approximately five years, in that particular capacity.

Q. Mr. Lyon, have you prepared certain exhibits for presentation at this hearing?

A. Yes, sir.

Mr. SULLIVAN. Mr. Reporter, Protestants' Exhibit 36 for identification, please.

(Protestants' Exhibit 36, Witness Lyon, marked for identification.)

By Mr. Sullivan:

Q. Mr. Lyon, I hand you a document which has been marked by the reporter as Protestants' Exhibit No. 36 for identification, bearing the caption "Great Lakes Transit Corporation—Statistical table of operations by above carrier and Minnesota-Atlantic Transit Company," and I will ask you to tell us, please, how this exhibit was prepared.

A. Yes, sir. This exhibit was prepared from our I. C. C. reports, that is, the reports of the Great Lakes Transit Corporation to the Interstate Commerce Commission, and the reports of the Minnesota-Atlantic Transit Company to the Interstate Commerce Commission. These figures are based on those annual reports.

Q. For the years shown?

A. Yes, sir.

567 Q. And with the exception of the stars in pencil indicated on this document, and the notation in the lower lefthand corner, is this a photostatic copy of one of the documents in the Merger Case referred to, before the Interstate Commerce Commission?

A. Yes, sir.

Q. To the best of your knowledge and belief, the figures that are set forth here are true and correct, are they?

A. Yes, sir.

Q. I call attention to the fact that the star appearing here so many times carries us to the symbol, or to the note at the bottom of the exhibit, in the lower left hand corner, indicating that the figures besides which those stars stand are in the red, red figures. That is correct, is it?

A. Yes, sir.

By Exam. McGRATH:

Q. And that signifies a deficit, does it?

A. In most instances; yes, sir.

By Mr. SULLIVAN:

Q. Well——

A. As a matter of fact, in all.

Q. In all instances.

A. Yes, sir.

Q. Now, Mr. Lyon, I notice that these figures in your Exhibit No. 36 for identification, and with the year 1940.

A. Yes.

Q. Do you have the corresponding figures for the year 1941?

A. Yes.

568 Q. Were those figures prepared from the same source as indicated above?

A. Yes, sir.

Q. If you will just put those figures into the record, then, in the following manner, I believe it will facilitate matters. For instance, will you please read the column caption in each instance?

Exam. McGRATH: Yes.

By Mr. SULLIVAN:

Q. And then give the corresponding figures for 1941; and we will be able to proceed very nicely that way?

A. All right. Column No. 1, year 1941. Column No. 2, Great Lakes Transit tonnage, 960,251 tons; Column No. 3, MAT Line tonnage, 300,592 tons; Column No. 4, Total tonnage, 1,260,843 tons; Column No. 5, Great Lakes Transit freight revenue, $2,880,782—that is dollars even, with no pennies. The next money column——

By Exam. MCGRATH:

Q. Column 6, is that?

A. Yes, sir; MAT freight revenue, $1,236,519—that is, even dollars, with no pennies. Column No. 7, total freight revenue, $4,117,301—dollars even again, with no pennies. Column No. 8, another money column, $3,418,908.

By MR. FOSTER:

Q. That figure again, please?

A. $3,418,908—dollars even again, with no pennies. Column No. 9, $1,753,520; Column No. 10, $5,172,428.

Mr. LEWIS: What was that last figure, please?

569 (Answer read.)

A. (Continuing.) Column No. 11 is in the red, $264,379; and Column No. 12, $45,909.

By Mr. EISEN:

Q. In the red?

A. Yes, sir; all red. Then, lastly, Column No. 13, Net Income, is still in the red.—$310,288.11.

By Mr. SULLIVAN:

Q. That completes the figures.

A. Yes, sir.

Mr. SULLIVAN. Mr. Reporter, Protestants' Exhibit No. 37 for identification, please.

(Protestants' Exhibit No. 37, Witness Lyon, marked for identification.)

By Mr. SULLIVAN:

Q. Mr. Lyon, I show you a document which has been marked by the reporter as Protestants' Exhibit No. 37 for identification, which, under the caption of the name of your company, reads "Table of gross revenue, expenses and net results of operations in total and divided between named lakes served for years stated below." Was this exhibit prepared under your direction?

A. Yes, sir. That is, it was checked by me. The original, from which this was prepared, however, was not prepared by me or

under my direction. I verified the figures, however, when this exhibit was set up.

Q. But the last column here shows your figures, does it not?

A. Yes.

570 Q. The figures in the last column are your figures?

A. Yes.

Q. Prepared by you?

A. Yes, sir.

Q. To the best of your knowledge and belief is this exhibit correct in what it purports to show?

A. Yes, sir.

Q. What were the sources of information?

A. Well, the final results, shown as Net Result, was taken, as indicated, from line 7, page 300, I. C. C. Annual Report. In other words, those are the figures which the mathematical calculations above will verify.

Q. So that the basis of this statement is the annual reports to the Interstate Commerce Commission; is that correct?

A. Yes, sir.

Mr. SULLIVAN. At this time, if your Honor please, I offer Protestants' Exhibits Nos. 36 and 37 for identification in evidence.

Exam. MCGRATH. Without objection, the exhibits will be received in evidence and marked as Protestants' 36 and 37.

(Protestants' Exhibits 36 and 37, Witness Lyon, received in evidence.)

Mr. SULLIVAN. That is all on direct.

Exam. MCGRATH. Cross examine.

571 Cross-examination by Mr. FOSTER:

Q. Great Lakes Transit Corporation, then, Mr. Lyon, has not since 1933 made a net profit; is that correct?

A. Yes.

Q. They have had losses, since they have made any profit, of well over two million dollars; is that correct?

A. Yes.

Q. Do you know the book value of those fourteen ships that have been referred to here, at the time they were taken over?

Mr. SULLIVAN. Just a moment. I would like to object to that question, if your Honor please. I see no competency to that.

Mr. FOSTER. Oh, if the Examiner please, I think it is very important. They say that they plan on going into the business again, and continuing operations; and I think it is perfectly proper to inquire if they are physically able to get the vessels.

Mr. SULLIVAN. Objection.

Exam. MCGRATH. This witness has not testified with respect to any vessels.

Mr. FOSTER. No; that is true, Mr. Examiner; but the other witness, the preceding witness, referred us to the auditor. He said he did not know, but that the auditor was going to be on the stand a little later on.

Mr. SULLIVAN. Regardless of that, your Honor, I am ob-
572 jecting to this line of cross-examination because it is not competent. I put the query: what difference does it make if our vessels were worth $100, or $1,000,000?

Exam. MCGRATH. What is the relevancy of this line of cross examination, counsel?

Mr. FOSTER. The relevancy of this line of cross examination, if the Examiner please, is this: they are contending here that these applicants ought not to be permitted to go into this business, because they would be competitors of theirs; that they should not be permitted to operate the boats that they presently have. They say that their vessels have been taken away from them; and they have read a statement of the record, an excerpt from a letter which they sent to their stockholders——

Mr. ELDRED. Is this oral argument; now?

Mr. FOSTER. No; it is not. The Examiner asked me what the relevancy is of this line of cross examination, and I am trying to answer him.

Mr. ELDRED. This is all going into the record, is it?

Mr. FOSTER. Yes.

Exam. MCGRATH. Go ahead.

Mr. FOSTER. Now then, if the Examiner please, they say that it is possible for them to continue. I say it is perfectly pertinent for me to try to find out whether or not it is possible for them
573 to continue. They have left the inference here that it is possible for them to continue.

Mr. SULLIVAN. Now, your Honor, I would like to say just a word on that, because I regard that as the crux of this case. These applicants are operating under temporary rights, and they can so operate until the end of 1944.

Mr. FOSTER. Their operations under temporary rights are purely their original application as to their other operations.
same vessel at the same time, but they are still operating under their original application as to their other operations.

Mr. SULLIVAN. And you do not operate in any other way, with automobiles, except in the grain boats, do you?

Mr. FOSTER. We may, or we may not. We have not so far; no; but we might operate with automobiles on ore boats, or in various other ways which we would have a perfect right to do under our original application.

Mr. SULLIVAN. If you did not have the temporary rights at this moment to do everything that you want to do, there is still a way

open to you. Now as contrasted with that, if your Honor please, they want to acquire permanent rights, leaving us in the peculiar situation that when the war is over we will be met with a competitor that came in under a temporary arrangement and then offers competition to the old established lines.

Mr. FOSTER. We filed an application in this matter before we even got into the war, with respect to the sale of fourteen vessels, most of which apparently were lying at the dock
574 doing nothing.

Mr. EISEN. Because there was not enough business.

Mr. FOSTER. And we are still operating under our original authority on the Great Lakes, under our original application.

Exam. MCGRATH. If you consider that this testimony is pertinent, counsel, you are at liberty to call this gentleman as your own witness, if you desire to do so. However, he has not covered this matter in his direct testimony, and therefore I will have to sustain the objection.

Mr. FOSTER. Very well, then, sir. I will call him as my own witness.

Exam. MCGRATH. Very well. Your examination of the witness from now on will be conducted upon that basis.

Mr. FOSTER. Yes.

Exam. MCGRATH. All right.

By Mr. FOSTER:

Q. Mr. Lyon, do you know the present financial situation of the Great Lakes Transit Company?

A. Just how do you mean?

Q. Do you know the present financial standing of that company? How much money has it got in the bank, for example?

A. I couldn't say definitely.

Q. Tell us approximately.

Mr. SULLIVAN. Now, if your Honor please, I am going to object to that, for the reason that the policy of the company, which
575 has been in effect a great many years, should not be interfered with by somebody having temporary rights, or seeking temporary rights, and thus getting a foothold upon which to compete with these other companies in the future. Until it is established that they are not going into the business permanently, these applicants should not be given rights. That is why I fail to see what the financial condition of this company has to do with this case.

Mr. EISEN. And particularly, Mr. Examiner, in view of the events which necessitated a cessation of service by the established lines.

Mr. SULLIVAN. What Mr. Eisen means, your Honor, is that the government took our ships.

Mr. EISEN. Yes.

Mr. SULLIVAN. We did not give them up voluntarily.

Exam. McGRATH. What relevancy has this question to the direct testimony of the witness?

Mr. FOSTER. He is my witness, now.

Mr. SULLIVAN. I renew my objection.

Exam. McGRATH. I am asking you, what the relevancy of this last question is, counsel?

Mr. FOSTER. The relevancy, your Honor, is as to whether or not they can carry out what they say very glibly is their plan, if a lot of things happen. I think it is most important to see whether or not they are going to be able to do what they say they are
576 going to do. One witness, for example, testified that they expected to operate fourteen boats.

Mr. SULLIVAN. Oh, no.

Mr. FOSTER. Or at any rate, enough to take care of them,—something to that effect. The record will show.

Exam. McGRATH. Ten to fourteen boats, I believe he said.

Mr. FOSTER. The inference is that that is their plan, and that they will go through with it, and I think this line of examination is perfectly pertinent, in view of the testimony of Mr. Emblidge, and also that of the other witness; and I am perfectly willing to make him my own witness, for the purpose of this examination.

Exam. McGRATH. Well, I just wanted to be sure that you had completed your cross-examination, before you made him your own witness.

Mr. FOSTER. Oh, yes, your Honor, we have completed the cross-examination.

Mr. SULLIVAN. I thought he had, your Honor. The witness is now Mr. Foster's own witness.

Mr. FOSTER. Yes.

Exam. McGRATH. Well, I just wanted to be sure that the record was clear on that. You have completed all of your cross-examination of the witness now, have you?

Mr. FOSTER. Yes.

Exam. McGRATH. And you are now examining the witness as though on direct examination?

577 Mr. FOSTER. Yes.

Exam. McGRATH. All right. You may answer the question, then, as a witness for protestants.

Mr. FOSTER. Yes.

The WITNESS. What is the question?

Mr. SULLIVAN. Just a moment. Is your Honor overruling my objection?

Exam. McGRATH. Yes.

Mr. SULLIVAN. I did not understand.

The WITNESS. What is the question?

Exam. McGRATH. Read the question, please.

(Question read.)

Mr. ELDRED. If the Examiner please, I would just like to make this one observation, that if we are going to go into this particular line of questioning, we are going to be here for a long, long time. I think that is perfectly apparent. What this company may have in the bank at the present time does not throw any light upon what the situation of the company may be when the war is over. Nobody knows now what conditions may be then. It is all problematical.

Exam. McGRATH. Your argument can be made from the testimony. Go ahead.

A. Well, any figures that I might present here would be purely from memory, and without any documentary evidence to support them at this time.

578 By Mr. FOSTER:

Q. Well, did the May 1943 statement of the company go across your desk, the balance sheet for that month?

A. For the month of May?

Q. Yes.

A. Not that one.

Q. Not that one?

A. No, sir.

Q. Well, then, when was the last monthly statement of the company that went across your desk?

A. For the month of April.

Q. April?

A. Yes, sir.

Q. Well, will you answer that question, to the best of your knowledge, based upon that statement, then?

A. I could if I had it before me.

Q. Those being the latest available figures, as far as you are concerned?

A. If I had it before me, I could.

Q. Well, then, will you give us the best of your recollection, as to what that was?

Mr. SULLIVAN. Perhaps I can help you. Here is the projected balance sheet that went to the stockholders.

A. Any answer that I might give you to that question, the way in which you have phrased it, certainly will not indicate any financial condition of the company as of tomorrow,

579 even, by reason of the fact that four of the vessels that

have been requisitioned, have not as yet been paid for. Now, as to what that amount will be, I do not know.

Exam. McGRATH. But with the exception of that——

Mr. FOSTER. Yes.

Exam. McGRATH. Can you answer the question?

By Mr. FOSTER:

Q. You know what you were paid for the first ten, do you not?

A. Yes.

Q. What was it?

A. We have $1,250,000 worth of government bonds, right now.

Q. $1,250,000 of government bonds?

A. Yes, sir.

Q. Does the statement also show your liabilities?

A. Yes.

Q. What does it show?

A. Well, at the present time I believe that we owe less than $5,000, which would be just merely small current bills.

Q. $5,000?

A. Yes, sir; which will be liquidated on approximately the 10th of June. We have a cash balance in the bank to pay them.

Q. And you have outstanding $1,157,800 of 7 percent cumulative preferred stock; is that correct?

A. Yes, sir.

Q. This letter that has been referred to here, was the
580 letter that was addressed to your stockholders, as I understand it.

A. Yes, sir; and the figures that are indicated there are still substantially correct?

Q. They are still substantially correct?

A. Yes, sir.

Q. Now do you have any idea as to what new ships would cost to build?

A. That would be contingent entirely on the type, the tonnage, and so forth; that is, as to whether you are going to build 5,000 ton vessels, or 15,000-ton vessels.

Q. I am talking now about the particular type of vessels that you contemplate building.

A. That I could not say.

Q. You do not know, then, what type of ships they will be?

A. No, sir.

Q. Now I see that you have here, among your assets of $3,063,000, floating equipment, four vessels, $997,267.02.

A. Yes.

Q. That is in the statement as of December 31st.

A. Yes; and that is the situation today.

Q. That is what you have them on your books for?

A. Yes, sir.

Q. As a matter of fact, for the vessels which were requisitioned by the government, you got only an average of $190,000 apiece; is that correct?

581 A. Yes.

Q. Did any of these last four vessels have reefer space?

A. Yes, sir; a small amount—with the exception of two; the Sargent and Utica had no refrigerator capacity at all.

Q. They had no refrigerator capacity at all?

A. No; but the other two did.

Q. But it was not used?

A. Well, not at the end of the season, no, sir, because they were ordered by the Office of Defense Transportation to operate in the grain trade; but the refrigerators were serviceable.

Q. They were serviceable?

A. Oh, yes, indeed, and they were used earlier in the season.

Q. Now, as a matter of fact, do you know whether or not the reason that the War Shipping Administration is not settling for the ships that were taken last fall, is because you were paid too much for the earlier ships which were taken?

A. Are you speaking of our ships?

Q. No; ships generally.

Mr. EISEN. Objection.

By Mr. FOSTER:

Q. And that is holding up the settlement?

Mr. EISEN. Just a moment.

Exam. MCGRATH. Read the question, please.

(Question read.)

Mr. EISEN. Objection.

Exam. MCGRATH. Objection sustained.

582 By Mr. FOSTER:

Q. What was the basis of setting up in this December 31st statement, the amount of $997,267.02 for those four ships?

A. That was the cost.

Q. The cost——

A. Yes.

Q. —— of those ships?

A. Yes, sir.

Q. And when that was set up, you did not have any idea, yourself, knowing the manner in which you had settled before, of getting that much money for those ships from the War Shipping Administration, did you?

A. No. You guess.

Q. Well, I am asking you now. You did not have any idea that you would get that much, did you.

A. No, sir. I say, you guess. It is just a guess, one way or the other.

Q. You cannot tell us now, of course, as to what your situation will be after the war is over, as to whether you will have any money to buy ships with or not, can you?

A. I believe that has been covered before.

Q. All right. Now I understand, from this statement from which you have been reading here, that your estimated loss for 1942 operations was $170,000.

A. Yes. What about it?

583 Q. That was your estimated loss for 1942, was it?

A. Estimated.

Q. That is what I say.

A. Right.

Q. Do you know what it actually was?

A. Yes; in round figures.

Q. What was it, in round figures?

A. $200,000.

Q. $200,000?

A. Yes, sir.

Q. And if you continue at that rate of loss, to lose money at that rate, as shown by your various exhibits, by the time the war is over, if it last very long, you will not have any money left; that is correct, is it not?

Mr. EISEN. Just a moment.

Mr. SULLIVAN. I object.

Mr. ELDRED. I object.

Exam. MCGRATH: Sustained.

Mr. FOSTER: Oh, if the Examiner please, I submit that is a pertinent question.

Mr. EISEN: Counsel is just arguing with the witness, now.

Exam. MCGRATH: Yes, you are arguing with the witness. You are making your deduction, and asking him to assent to it.

Mr. FOSTER: No. I am merely asking him a question, which he can answer by yes or no.

584 Mr. LEWIS. As I understand it, Mr. Examiner, this examination of the witness is direct examination, now, and not cross examination, but the questions that Mr. Foster has been asking of the witness are more in the form of cross-examination, rather than direct.

Exam. MCGRATH. Are there any further questions of the witness on direct?

Mr. FOSTER. Do you mean, on cross?

Exam. McGRATH. No, I mean on direct examination. The witness is your witness now, you must remember.

Mr. SULLIVAN. You finished your cross-examination of the witness some time ago, you said.

Mr. FOSTER. That is right.

Exam. McGRATH. And the witness is now testifying as your witness, and has been for some time, now.

Mr. FOSTER. That is correct.

By Mr. FOSTER:

Q. Well then, let me ask you this question, Mr. Lyon: you have no knowledge at the present time of what you will be able to do after the war is over in the way of putting any boats in service on the lakes at all; that is correct, is it not?

A. Yes, sir.

Mr. FOSTER. That is all.

Exam. McGRATH. Is there anything on redirect?

Mr. SULLIVAN. Yes, please.

585 Redirect examination by Mr. SULLIVAN:

Q. Mr. Lyon, with respect to the suggestion of Mr. Foster, as to past losses, directed to the argument that he hopes to make: the losses which have been set up in your Exhibit No. 30 were losses from full line company operations, were they not?

A. Yes, sir.

Q. And your company at the present time is not operating at all, is it?

A. No.

Mr. SULLIVAN. Thank you.

Exam. McGRATH. Are there any further questions?

Re-cross-examination by Mr. FOSTER:

Q. Will you tell me, please, how your company lost $200,000 in 1942, if your company is not operating at all?

A. This is 1943.

Q. All right. Well, do you mean, then, that your full line operations accounted for that loss of $200,000 in 1942?

A. No, sir; only a partial operation, because of the fact that, as Mr. Emblidge testified, the vessels were taken starting in June, and then in July, and so forth, on until November, when all of them were gone.

Q. The Great Lakes Transit Corporation, as I understand it, now, is not in operation at all; is that correct?

A. Not in lake transportation.

586 Q. Not in lake transportation.

A. No.

Mr. FOSTER. I think that is all.

Mr. SULLIVAN. I know it is all, as far as I am concerned.

Exam. MCGRATH. You are excused.

(Witness excused.)

Exam. MCGRATH. We will recess at this time until two o'clock this afternoon.

(At 12:45 p. m., recess taken until 2:00 o'clock, p. m.)

AFTERNOON SESSION

The hearing was resumed pursuant to recess. 2:00 P. M.

Exam. MCGRATH. Come to order, please, gentlemen. The hearing will now be resumed. Have you any further evidence to present, Mr. Sullivan?

Mr. SULLIVAN. No, sir.

Exam. MCGRATH. Who is next?

Mr. EISEN. I have some.

Exam. MCGRATH. You may proceed.

Mr. EISEN. Mr. Hughes.

Exam. MCGRATH. Has this witness testified before?

Mr. EISEN. No.

LEWIS HUGHES was sworn and testified as follows:

587 Direct examination by Mr. EISEN:

Q. State your name.

A. Lewis Hughes.

Q. Your address.

A. 1950 East 105th, Cleveland.

By Exam. MCGRATH:

Q. Cleveland, Ohio?

A. Yes, sir.

By Mr. EISEN:

Q. With what company are you affiliated?

A. Hughes-Burnett, Inc.

Q. What is that company?

A. We are direct Chrysler dealers on Dodge-Plymouth, and Dodge trucks.

Q. That is, Dodge passenger automobiles?

A. Right.

Q. And Plymouth passenger automobiles.

A. Yes, sir.

Q. And Dodge trucks.

A. That is correct.

Q. How long have you been a dealer in automobiles?

A. Oh, I have been a dealer for about eight or nine years, now,—that is, under this particular firm name.

Q. And prior to that time, you were also a dealer, but under a different name, were you?

A. No, sir; before that I wasn't a dealer, but I was connected with a dealer organization, as part of a dealer organization.

588 Q. I see. Now who routes the Chrysler products which your firm obtains from the Chrysler factory from Detroit to Cleveland?

A. By boat?

Q. Yes.

A. Or any way?

Q. Any way. With respect to transportation, who provides the method of transportation, or who instructs the factory with respect to the method of transportation is to be employed?

A. The dealer does, in our case, in our line.

Q. That is, you instruct, as to the routing?

A. Yes, sir.

Q. You give the instructions as to the routing of the products?

A. Yes. They ask for it.

Q. They ask for it, do they?

A. Yes, sir.

Q. Who pays the freight charges on such transportation?

A. We do; we pay them direct.

Q. Do you know whether or not, of your own personal knowledge, all Chrysler dealers route their own traffic and pay their own freight charges?

A. I can answer that question by saying that all of the Dodge dealers do; yes, sir, of our division. However, I know nothing about the others, you see.

Q. But you do route the traffic and pay the freight charges on your Plymouth automobiles, do you?

589 A. Yes.

Q. What have you to say, Mr. Hughes, with respect to the year 1941, as to whether it was a good year, a fair year, a very good year, or what?

Mr. Foster. With respect to his own individual business, I take it you mean?

Mr. Eisen. With respect to his own individual business; yes. That is all he is testifying about.

Mr. Foster. All right.

A. Oh, it was one of the best, I would say, but do you mean, now, as to the number of cars, or profitwise?

By Mr. Eisen:

Q. The number of cars sold.

A. It was one of the best years that I can recall.

Q. How were your automobiles routed last year, during the season of open navigation—that is, your automobiles and trucks?

A. Do you mean by "last year"——

Exam. McGRATH. 1942.

By Mr. EISEN:

Q. I mean, 1942.

A. Well, I would say that about 70 percent of our cars were routed by boat; and the others were driven, or hauled, during the extreme winter months.

Q. With respect to the 70 percent that moved by boat, can you give us some idea of what boat lines handled them?

A. Nicholson-Universal, I would say, handled about 60 percent of them; and the Detroit & Cleveland Navigation,
590 about 10 percent.

Q. What have you to say with respect to the service, the water service, which you received in 1941?

A. Good.

Q. The service was good?

A. Yes.

Q. Insofar as your products and the service which you have received in your particular connection in the way of water transportation are concerned, would you say that, in your opinion, there was any need for any additional carriers in the field?

Mr. FOSTER. Just a moment. May I hear that question again, please, Mr. Reporter.

(Question read.)

Mr. FOSTER. I object to that question, if the Examiner please. I do not think that this witness is qualified to answer a question of that kind.

Mr. EISEN. I have specifically limited it to his own particular business, and his own personal knowledge. I purposely restricted it to his own business, just so that it would not be objectionable.

Mr. FOSTER. Do you mean by the question, in his opinion, is there any other transportation facility needed to transport his particular automobiles?

Mr. EISEN. That is what I said.

591 Mr. FOSTER. All right. If the question is limited in that way, I do not have any objection.

Exam. McGRATH. Do you understand the question?

The WITNESS. Repeat it.

Exam. McGRATH. Read it, please.

(Question read.)

A. Why, I would answer that question by saying that we were taken care of promptly, and with good service.

By Mr. Eisen:

Q. Am I to construe that answer, then, Mr. Hughes, as meaning that you do not think there is a need for any additional service?

A. Well, I would answer that as I did before, by saying that we had no hold-up of the cars, but on the contrary, they came through very promptly, right on schedule.

Q. And the service was satisfactory?

A. Yes, sir.

Mr. Eisen. That is all.

Exam. McGrath. Cross-examine.

Cross-examination by Mr. Foster:

Q. How many cars did you ship during the year 1941 between Detroit, Michigan, and Cleveland, Ohio, by boat?

A. We sold—or we received from the factory over——

Q. That is not the question.

A. I will answer the question—800 cars. I do not know now just exactly the amount; but it was over 800 cars, anyway.

592 Now, approximately 70 percent of those cars were shipped by the water route.

Q. What percent?

A. About 70.

Q. How long was this water service available to you?

A. Do you mean, during the year 1941?

Q. Yes; how long during the year; what length of season of navigation did they have during 1941?

A. Why, I think that the boat service starts in in March sometime, if I recall it correctly; and I don't recall the date exactly, but it ends somewhere around December the 1st. I don't recall the date, the exact date now, on either end, as far as that is concerned.

Q. On the Cleveland run, they usually run to December the 12th, do they not?

A. I said, about December 1st.

Q. All right.

A. I couldn't give you the exact date.

Q. So that you have, then, actually, about a nine-month service, service over the period of about nine months; is that correct?

A. I guess that is what it would figure.

Q. And you shipped out roughly some 60 cars per month by water; is that correct?

A. Yes.

593 Q. Are you familiar with the vessels, or were you familiar with them, that the Detroit & Cleveland Navigation Company was operating in 1941?

A. The type of boats?

Q. Yes, on the Detroit-Cleveland run.
A. No, sir.
Q. You never saw them?
A. No, sir.
Q. Well, it has been developed clearly in the record here that three of the vessels which the Detroit & Cleveland Navigation Company was operating in 1941, were owned by these applicants.
A. I wouldn't know.
Q. You do not know anything about that?
A. No, sir; not at all. That wouldn't be any of my concern. I wouldn't know who owned the boats.
Q. And you would not know what percentage of the 10 percent that the Detroit & Cleveland Navigation handled, was transported on their own vessels, or what percentage was transported on vessels that belong to the applicants here, would you?
A. No, sir; I wouldn't be able to say that, because I wouldn't have any way of knowing that.
Q. In your movement of, roughly, two cars per day, you do not see the necessity for putting on any additional service, do you?
A. No.
594 Q. From the experience that you had in 1941.
A. No, sir; I really don't. I would say that the service we got, was good service.
Q. They were always able, somehow or other, to give you fairly good dispatch on your two cars per day, were they?
A. Yes.
Mr. FOSTER. That is all.
Exam. MCGRATH. Are there any further questions of the witness?
Mr. EISEN. Nothing.
Exam. MCGRATH. That appears to be all. You are excused.
The WITNESS. Thank you, sir.
(Witness excused.)
Exam. MCGRATH. Next witness.
Mr. EISEN. Mr. Feder.
Exam. MCGRATH. Has he been a witness before?
Mr. EISEN. No.
Exam. MCGRATH. Be sworn, please.

MARCUS FEDER, JR., was sworn and testified as follows:

Direct examination by Mr. EISEN:

Q. Please state your name.
A. Marcus Feder, Jr.
Q. Your address.
A. 4600 Euclid Avenue, Cleveland Heights, Ohio.
595 Q. With what company are you connected?

A. Dowd-Feder, Inc.

Q. What is that company?

A. Chrysler-Plymouth automobile distributors in northeastern Ohio.

Q. When you obtain your Chrysler products from the factory, who routes the cars?

A. We do.

Q. Who pays the freight?

A. We do.

Q. During the season of 1941—or rather, first, let me ask you this question, as to whether the year 1941 was a good year, a fair year, or a very good year so far as your company was concerned?

A. It was the best year that we have ever had.

Q. During the open season of navigation in 1941, did you use water service?

A. Yes.

Q. What lines did you use?

A. Nicholson Steamship.

Q. Do you know how many cars you sold and received during 1941?

A. Well, we sold seven thousand in, and we shipped five thousand out, by water.

Q. And they all moved Nicholson-Universal, did they?

A. Yes, sir.

596 Q. Now, what have you to say, Mr. Feder, with respect to the service which you received during 1941 from the Nicholson-Universal Steamship Company?

A. It was very satisfactory.

Q. Did you have any delays, or any hold-ups?

A. No.

Q. Did you have any serious complaints?

A. None.

Q. Or any complaints of any nature whatsoever?

A. No.

Q. Now predicated upon your own experience in 1941, insofar as your own particular business needs were then concerned, do you know of any reason why any additional boats or boat lines were or are needed to carry automobiles?

A. Not for our needs; no, sir.

Mr. EISEN. That is all.

Exam. MCGRATH. Cross-examine.

Cross-examination by Mr. FOSTER:

Q. You say that insofar as your own personal knowledge is concerned, you do not have any delays in the case of vessels remaining here on the dock; is that correct?

A. In the case of what?

Mr. EISEN. Cars, do you mean?

By Mr. FOSTER:

Q. I mean cars; yes.

A. No, sir; we do not. We receive our invoices, and pay
597 our bills, and the cars come through, as I stated before, within a reasonable length of time.

Q. Well, I see. The Chrysler-Plymouth Corporation does reserve the right, under its franchises and contracts, to do the routing, if it deems it necessary, does it not?

A. No, sir; not as far as I know. They give us the right to route the cars as we see fit.

Q. But they also reserve the right, if they see fit, to do the routing themselves, do they not?

A. No.

Q. They do not?

A. No, sir.

Q. You disagree, then, with Mr. Brennan's testimony in that respect?

A. If that is what he said.

Q. He testified——

A. I don't know what he did testify.

Mr. EISEN. What testimony?

A. (Continuing.) But I wouldn't know why there would be any question about that, at any rate.

Mr. FOSTER. He testified that they do reserve that right.

Mr. EISEN. I do not think so.

Mr. FOSTER. Oh, yes, he did; in the Nicholson Transit Case, which is in this record.

Mr. EISEN. The Nicholson Transit Case is not in this
598 record.

Mr. FOSTER. Oh, yes; it is. You stipulated it all in.

Exam. MCGRATH. Off the record.

(Discussion outside the record.)

Exam. MCGRATH. Back on the record.

By Mr. FOSTER:

Q. At any rate, Mr. Witness, if Mr. Brennan did testify that the Chrysler Corporation does reserve the right, in its discretion, to route cars, you would say that that did not apply to your particular franchise with Chrysler, or Plymouth; is that correct?

A. If you will permit me—I mean, now, if this could be off the record, if that is agreeable——

Exam. MCGRATH. No. We want it on the record, if it is germane to the issues.

The WITNESS. Well, I can tell you what the practice of the corporation is, although we have never had any experience along that particular line.

By Mr. FOSTER:

Q. All right, then; would you mind telling us, please, what the practice of the corporation is.

A. The practice is that if the dealer does not pick the car up, the Chrysler Corporation will give it another routing. I understand that to be the practice.

Q. But in the case of your particular cars, as far as they are concerned, you say that, as far as you know, you did not have any unusual delay or difficulty in moving them; is that right?

599 A. Right.

Q. And you received about five thousand cars over a period, I assume, of approximately nine months; is that correct?

A. Yes, sir.

Q. Which, if all loaded on one boat, would be a little bit more than one boatload per month, would it not?

A. Well, no, sir. Our cars come through regularly, every day; we get our automobiles every day.

Q. You get some cars every day?

A. Yes.

Q. What was your position with Dowd-Feder in 1941?

A. Our position?

Q. No; your position.

A. With the corporation?

Q. Yes.

A. Vice president.

Q. Vice president of the corporation?

A. Yes, sir.

Q. Did you have direct charge of the traffic end of the business of the corporation—that is, the movement of its cars?

A. Why, in part directly, and in part indirectly, I would say, but I am familiar with it.

Q. You moved your cars exclusively, did I correctly understand you to say, over the Nicholson-Universal Steamship Line?

A. By water.

600 Q. You did not ship any cars over the D. & C.?

A. Why, there might have been some; yes, sir; but then only in isolated cases. I don't believe that there was as many as a dozen automobiles, even, that were handled that way.

Q. Well, why did you ship that particular dozen automobiles, if it was as many as a dozen, over the D. & C., if you recall, or if you have any knowledge as to that?

A. I couldn't say.

Q. Pardon me?

A. I couldn't recall.

Q. Who was in charge for the Dowd-Feder Corporation, if cars were delayed to any unusual degree, to check up on them and see that they moved forward promptly, just as they were shipped, every day?

A. Oh, we have a department that we call the Car Department, the New Car Department.

Q. New Car Department?

A. Yes, sir.

Q. And who was in charge of the New Car Department of the corporation?

A. A Miss Green.

Q. Miss Green?

A. Yes.

Q. Was she directly responsible to you?

601 A. Well, it was just done automatically. Those cars were delivered to Automobile Shippers, and they in turn delivered them to the boats.

Q. Who are Automobile Shippers?

A. Automobile Shippers is our transportation company in Detroit.

Q. Your transportation company?

A. Well, the transportation company that we retained at the Chrysler plant, to deliver the cars to the boat. The cars had to be delivered to the boat, of course.

Q. Yes. And then they in turn were delivered to Cleveland by the Nicholson-Universal Steamship Company.

A. Yes, sir.

Q. You have no personal knowledge, of course, of what difficulties other distributors may have had, or what difficulties the factory may have had, in the way of delay on the docks, have you?

A. No.

Q. Were cars ever held over here in large quantities, in large numbers?

A. No.

Q. As far as you know, referring again to the twelve cars that you say were shipped via the D. & C., it was not necessary to divert those cars, as the testimony shows that it was in other instances, because Nicholson-Universal could not move them, was it?

602 A. Well, I am not familiar with the odd cars that might have been shipped elsewhere.

Q. As far as you know, then, the cars that were diverted to the D. & C., might have been diverted that way because of the fact——

Mr. EISEN. Just a moment.

The WITNESS. They may have been taken down there by accident. I wouldn't be able to tell you now.

Mr. EISEN. Just a moment, please. I object to that question, if the Examiner please. Nobody said those cars were diverted.

Mr. FOSTER. Oh, yes; there is such testimony in the record.

Mr. EISEN. This witness did not say that the cars were diverted.

Mr. FOSTER. Just a moment. Listen to the question.

Mr. EISEN. I object to any cross-examination that does not follow the direct testimony. I qualified this witness with respect to his own activities only.

Mr. FOSTER. But the witness said that he did ship some cars over the D. & C.

Mr. EISEN. He did not say anything about their having been diverted.

Mr. FOSTER. I am merely asking him whether they were or not.

Mr. EISEN. He said he did not know. You are assuming something in your question.

Exam. MCGRATH. My understanding of the answer of the
603 witness to your question was that he does not know.

The WITNESS. Yes.

Exam. MCGRATH. Do you want to pursue the matter further, in the light of that answer?

Mr. FOSTER. Yes, if your Honor please, only to the extent of one or two further questions.

Exam. MCGRATH. Very well.

Mr. FOSTER. Which I think I have a perfect right to do.

Exam. MCGRATH. Go ahead.

By Mr. FOSTER:

Q. In so far as your own personal knowledge is concerned, Mr. Feder, these cars which you say were shipped by the D. & C. may have been some of the cars that Mr. Brennan testified concerning, that had to be delayed because of the inability of Nicholson-Universal Steamship Company to move the cars promptly. Is that correct?

A. No, sir; that is not correct. If they did get any, I would say that it was purely by accident, that the driver took them to the wrong dock.

Q. Do you mean to say that Auto Shippers would take cars that were destined for the Nicholson-Universal dock, to some other dock?

A. New drivers might; yes.

Q. Do you think that if they did take cars down to the D. & C. that were marked for Nicholson-Universal, D. & C. would accept those cars?

604 A. We are friendly with both companies.

Q. You are friendly with both companies?

A. Yes.

Q. But would the D. & C. accept an automobile from Auto Shippers that was routed via Nicholson-Universal?

A. Yes.

Q. In the face of the instructions by you to the factory, to ship via Nicholson-Universal—in violation of those instructions?

A. That is in the hands of Automobile Shippers.

Q. I though you said——

A. We ship via Automobile Shippers.

Q. Did you not testify a little earlier in your testimony here, Mr. Feder, that in connection with the handling of your Chrysler and Plymouth automobiles, you, as a distributor, have control of the routing of those cars?

A. Yes.

Q. Well then——

A. We do, but then, we have got to have them taken to the boat.

Q. Well, what were your instructions to the Chrysler Corporation with respect to the routing of those cars?

A. Our instructions to Chrysler was to deliver the cars to Automobile Shippers.

Q. To deliver them to Automobile Shippers?

A. Yes, sir; in the case of Chrysler. In the case of the
605 Plymouth Corporation, they take the cars down there free of charge.

Q. Well then, so far as you are concerned, Auto Shippers could take those cars any place they wanted to; is that correct?

A. To the boat.

Q. Yes, that is what I say, either to the D. & C., or to Nicholson-Universal, or anywhere else; is that correct?

A. No, sir. Automobile Shippers receive them from the Chrysler Corporation, and take them the way they are routed, except in the case of an accident, while the Plymouth Corporation, as I say, takes the car down free of charge.

Q. Well then, you do not have any instructions which you have placed with the Chrysler Corporation, to deliver those cars to Nicholson-Universal; is that correct?

A. The Chrysler Corporation, I believe, has a letter to deliver our cars, the Plymouth motor car, to the Nicholson-Universal Steamship Company dock; and the Chrysler Corporation—or rather, I should say, the Chrysler Sales Division, has a letter authorizing it to deliver all of our cars to Automobile Shippers.

Q. They have a letter authorizing them to deliver all of your cars to Automobile Shippers?

A. Yes, sir.

Q. And you think that those cars that went by way of the D. & C., were handled that way because Auto Shippers made a mistake and delivered them at the wrong dock; is that correct?

A. I presume so.

606 Q. But you do not know?

A. No.

Mr. FOSTER. That is all.

Exam. MCGRATH. Are there any further questions of the witness?

Mr. EISEN. Yes.

Re-direct examination by Mr. EISEN:

Q. If you had any unusual delays, Mr. Feder, in the movement of your automobiles, in other words, if your automobiles were tied up at the Detroit docks for a matter of some five or six or eight or ten days, would you know about that?

A. Certainly.

Q. In 1941, if your cars were tied up in Detroit, on the docks here, would your people have known about that?

A. Oh, yes.

Q. They would?

A. Yes, sir.

Q. And would you know about it?

A. Yes.

Q. Would it have been reported to you?

A. Yes, sir. We certainly would know about it, if there was anything of that sort happened.

Q. Has a situation of that sort ever been brought to your attention?

A. No.

607 Mr. EISEN. That is all.

Re-cross-examination by Mr. FOSTER:

Q. Mr. Feder, how long would you say that a car would have to be here on the dock at Detroit, before you would say that it was tied up, or consider that it was tied up on the dock?

A. Well, that would depend, I would say, upon the demand, the public demand, just at that particular time.

Q. As a matter of fact, if you had a lot of Plymouth or Chrysler automobiles on hand in your showroom, or in your warehouse, or on your lot, your cars could sit on the dock for a considerable period of time, could they not, without your feeling they were being tied up? That is correct, is it not?

A. Yes.

Q. And that is what you mean, when you refer to the public demand; is that correct?

A. Yes, sir; but always within reason, of course. For example, if cars came through dirty as a result of having been on the dock any period of time, we certainly would have reason to complain; but that is another story, perhaps.

Q. Well, can you give us some idea—or rather, let me ask you this question: assuming you had a two weeks' supply of cars on hand in Cleveland. How long would you say that a car would have to remain on the dock here in Detroit before you would consider that car as having been tied up?

608 A. Oh, we would consider any car as being tied up that would be on the dock much over four or five days.

Q. Much over four or five days.

A. Yes, sir.

Q. But you do not actually know, yourself, what the conditions on the docks here at Detroit were at that time, do you?

A. The conditions on the docks?

Q. Right.

A. Why, no, sir; I wouldn't be able to say as to that, but I know that the condition of the cars, when they came in, was all right.

Q. When you got them, they were all right?

A. Yes, sir.

Q. At Cleveland.

A. Yes, sir.

Q. If you had a two or three weeks' supply of cars on hand at Cleveland, you might have had cars that were on the docks here for two or three weeks, or in the warehouse here for two or three weeks, might you not?

A. No.

Q. Well now——

A. We never had any occasion like that.

Q. How do you know that?

A. Well, because you might have a two weeks' supply of cars on hand in volume, but not in body stock.

609 Q. Not in what?

A. Not in body stock—that is, taking all of the combined combinations, upholstery combinations, radio, heater equipment, and so forth.

Q. But it could of course have been possible for the very ones that were tied up here, to be the ones that you did have a supply of on hand; is that not true?

A. I didn't get that.

Exam. McGRATH. Read the question, please.

(Question read.)

A. Well, if I understand your question right, if we had had any reason to complain, we certainly would have complained, but we didn't.

By Mr. FOSTER:

Q. You do not recall any complaint being made?

A. Never.

Mr. FOSTER. That is all.

Exam. MCGRATH. Are there any further questions?

Mr. EISEN. Nothing.

Exam. MCGRATH. You are excused.

(Witness excused.)

Exam. MCGRATH. Next witness.

Mr. EISEN. Recall Mr. Arnold.

Exam. MCGRATH. This witness was previously sworn, was he?

Mr. EISEN. Yes.

Exam. MCGRATH. You understand that you are still testifying under oath here.

610 Mr. ARNOLD. Yes, sir.

J. M. ARNOLD recalled.

Direct examination by Mr. EISEN:

Q. Your name is J. M. Arnold.

A. Yes, sir.

Q. Just so that the record will be clear at this particular point, what is your title, Mr. Arnold?

A. General freight agent, Detroit & Cleveland Navigation Company, in this city.

Q. How long have you been general freight agent?

A. Pretty close to two years.

Q. Now, did anything unusual occur in 1942 to disrupt your automobile transportation?

A. Yes.

Q. What was it?

A. We had two boats in the service, the "Greater Buffalo" and the "Greater Detroit." The navy took over the "Greater Buffalo" and made an aircraft carrier out of it, so that disturbed our transportation in 1942.

Q. How often did you have sailings between Detroit and Buffalo in 1942 prior to the taking over of that boat?

A. Every night; over-night.

Q. And after the boat was taken over, what service did you have?

611 A. Three times a week.

Q. And did that automatically and drastically cut down your automobile carrying capacity?

A. Oh, yes.

Q. Now, in 1942—or in the current year, what is the situation with respect to your service between Detroit and Buffalo?

A. Did you say 1942?

Q. 1943.

A. Oh, this year we are operating two boats in the service, the "Greater Detroit" and the "Eastern States."

Q. And what is the frequency of your service?

A. Every night; over-night.

Q. What is your present automobile carrying capacity of army jeeps and trucks between Detroit and Buffalo?

A. Well, that will vary, of course. We can haul considerably more jeeps than we can trucks or ambulances.

Q. How many jeeps can you handle a day?

A. Oh, we can handle more on the "Greater Detroit" than we can on the "Eastern States." I assume our average would be possibly in the neighborhood of about 125 jeeps.

Q. 125 jeeps.

A. That would be about the average, yes, sir.

Q. And how many ambulances?

A. Oh, I would say that the ambulances will run—well, possibly in the neighborhood of 75.

612 Q. And how about the trucks?

A. Oh, they will run in the neighborhood of possibly 50 two-and-a-half-ton trucks.

Exam. McGRATH. I am afraid that you are talking a little bit fast. We are not in any such hurry. Take it a little slower, if you will, please.

The WITNESS. I am sorry.

By Mr. EISEN:

Q. Have you notified the army, and the various other governmental bodies, of your capacity this year?

A. Yes.

Q. And have you solicited the movement of ambulances, jeeps, and trucks?

A. Yes, sir. They have come to us, as a matter of fact.

Q. And have you been given any indication that you will carry any of these vehicles?

A. Oh, yes.

Q. How many?

A. Well, we are right now lined up to move about 600 two-and-a-half-ton trucks, and about 225 jeeps. That is not all of the movement, however. There will be more later on.

Q. Do you think that your facilities will be able to adequately take care of the army needs, with respect to jeeps and trucks, during 1943, or do you have any information as to that?

A. Why, I believe so, yes, sir, from all of the information that I have available at the present time. Unless I am mis-

613 taken, and I do not think I am, I think that we will be able to take care of them very nicely.

Mr. EISEN. That is all.

Exam. MCGRATH. Cross-examine.

Cross-examination by Mr. FOSTER:

Q. These figures that you have given us here, of 125 jeeps, 75 ambulances, and 50 trucks—those were the figures which you gave us, were they not?

A. 225 jeeps.

Q. 225?

A. Yes.

Q. I thought you just got through telling us that you could take 125 in one load.

A. Oh. I misunderstood you. I thought you meant the total amount that has been lined up for our movement.

Q. No. What you could carry would depend on whether or not you had other freight on the deck, would it not?

A. We are figuring, with freight on, that we will be able to transport that amount of equipment—that amount of vehicles.

Q. With freight on?

A. Yes.

Q. You will be able to take that amount?

A. Yes, sir.

Q. How many can you take on the smaller boat?

A. Well, that number would be reduced very materially.

614 This is an average of the two, you understand.

Q. How many can you take on the smaller boat, is my question. You ought to know that, if you are traffic manager of your company.

A. Well, now, I don't think that being traffic manager would have anything to do with that. That is purely a question of operation, and not traffic.

Q. Well, then, can you answer my question? Do you know how many you can take on the smaller boat?

A. (No answer.)

B. Do you know, or do you not know?

A. I wouldn't want to try to say definitely as to how many could be handled on the "Eastern States"; no, sir. As I explained before, I was giving you the average of the two.

Q. Well, now, how are you able to arrive at an average for the two of them, if you do not know how much one of them carries?

A. Why, simply having gone into the matter very carefully with our own people, and also having the representatives of the army sit down with me, and going into the matter in detail with them,

so that it is not a guessing proposition at all, but it is an actual fact.

Q. Well, now, let us see whether it is or not. How many can you carry on the bigger boat?

A. How many what?

Q. How many jeeps can you carry on the deck of the
615 "Greater Detroit"?

A. On the deck?

Q. Yes.

A. Well, it wouldn't be on the deck, because we don't carry any of them on the deck. We carry them below deck.

Q. It has a freight deck, has it not?

A. A freight deck?

Q. Yes.

A. Yes.

Q. Well, how many——

A. Oh, I would say in the neighborhood of maybe 155.

Q. 155 jeeps?

A. Oh, yes; possibly more.

Q. How many ambulances?

A. Maybe 80 or 90.

Q. And how many of the two-and-a-half-ton trucks?

A. Well, that would be hard to say.

Q. Approximately?

A. I gave you the average for the two boats together.

Q. Yes; I heard you say that. You could not carry any trucks if you were loaded down with jeeps, of course, could you?

A. Well, now, these vehicles are not going to be fed to us as fast as all that, you understand.

Q. How are they——

A. (Continuing.) They are going to be given to us, a
616 certain number per day.

Q. Do you mean that the jeeps, for example, are going to be given to you, a certain number per day?

A. I don't think that we are going to get them all at once.

Q. How are you going to get them?

A. They are going to be driven down to our dock.

Q. But how are you going to get them below, I mean?

A. As far as the volume is concerned, that will all depend, as I said before, upon how the army decides to move them.

Q. Well, then, you do not know whether you are going to get them all in one day or not, do you?

A. Oh, yes; I do. I know that we are not going to get them all in one day.

Q. But you say, that will depend upon how the army hands them to you.

A. Yes.

Q. So therefore you do not know that, do you?

A. They may give them to us 10 at a time, 25 at a time, or perhaps 50 at a time. They are going to build up a bank of them down there. But our ability to transport them is not predicated upon how many we can handle per day.

Q. It is not?

A. No, sir; it is not. As I say, they are going to build a bank of them down there, and they will come along from time to time, and we will take them as we can get them.

617 Q. What is the over-all length of one of these two-and-a-half-ton trucks?

A. That I wouldn't be able to say. I have never personally examined one of them.

Q. You do not know anything about how many of these things you can carry, except what somebody else has told you, then, do you?

A. Oh, yes, I do. We sat down with the representatives of the army, and between us we decided that that is what the capacity would be.

Q. But how were you able to decide that, if you do not know what the size of the units is?

A. Well, they will run—these trucks I am talking about now, will probably run in the neighborhood of 20 feet.

Q. What is the amount of deck space, in number of square feet, that is available, if you know?

A. That I don't know. You will have to ask somebody who knows the deck space.

Q. You do not know that.

A. No.

Q. And you do not know what the over-all length of the jeeps is, do you?

A. Offhand I don't know; no, sir.

Q. And you do not know what the over-all length of the ambulances is, either, do you?

618 A. Not offhand.

Q. Do you know the width of them?

A. No.

Q. Do you know the over-all width of the trucks?

A. No.

Q. You do not?

A. No, sir; outside of the fact that I understand the length of the trucks is approximately 20 feet.

Q. But you do not know that of your own knowledge?

A. Only what has been given me by the army.

Q. But you do not know offhand the over-all size of any of them, do you?

A. No, sir. I said before that I don't.

Mr. FOSTER. That is all.

Exam. MCGRATH. Are there any further questions of the witness?

Mr. EISEN. None.

Exam. MCGRATH. If not, you may be excused, sir.

The WITNESS. Thank you.

(Witness excused.)

Exam. MCGRATH. Next witness.

Mr. EISEN. Mr. Hewitt.

Exam. MCGRATH. You have been previously sworn in this proceeding, have you not?

Mr. HEWITT. Yes, sir.

619 Exam. MCGRATH. You understand that you are still testifying under oath here?

Mr. HEWITT. Yes, I understand.

F. L. HEWITT, Jr. recalled.

Direct examination by Mr. EISEN:

Q. State your name.

A. F. L. Hewitt, Jr.

Q. Your address.

A. Foot of 8th Street, Detroit.

Q. I believe you testified that you were vice president and general manager of your company?

A. Yes.

Q. Do you still occupy that position?

A. Yes, sir.

Q. At the present time, Mr. Hewitt, how many boats are being operated by your company on the Great Lakes?

A. Nine vessels.

Q. Name them.

A. The "Hewitt," "Sonoma," "Penobscot," "Coralia," "Crescent City," "Brown," "Sultana," "Sonora," and "Arthur Orr."

Q. Now, Mr. Hewitt, you have mentioned the "Penobscot," "Coralia," "Sonoma," "Crescent City," and "Hewitt"—is that correct?

A. Yes, sir.

Q. Are those five boats listed in Mr. McCarthy's Exhibit No. 33?

620 A. Yes.

Q. And they are presently being operated by the Nicholson-Universal Steamship Company, are they?

A. Yes, sir.

Q. What is your present intention as to the operation of the fleet of nine boats which you are presently operating, with respect to the postwar period?

A. Well, it is our intention that the present fleet of nine vessels will be in operation, operated by us, at the expiration of the emergency period.

Q. Have you already approached and made arrangements with the War Shipping Administration to reacquire those boats at the termination of the present hostilities?

A. Yes, we have. With the cessation of automobile production, and the interest in the vessels by the administration, or rather, by the government, at that time negotiations were entered into and discussions held as to the turning back of those vessels to us at the expiration of this emergency period, and those negotiations have been going on, and are more or less concluded in the form, may I say, a gentleman's agreement that at the expiration of the emergency those vessels are to be returned to us.

Q. What have you to say with respect to automobile transportation and its importance to your company?

A. Well, the Nicholson-Universal Steamship Company has made its name and its reputation entirely out of the move-
621 ment of automobiles. We are, and have been for the period of a good many years, a specialized carrier in this type of transportation. As I stated before, we have confined our activities to the movement of automobiles, up until the time of this present emergency; and with the cessation of the manufacture of automobiles, why, quite naturally those vessels have gone into the carriage of other products which are essential to the war effort.

Q. What is the intention of your company with respect to automobile transportation after the conclusion of the war?

A. Well, our intention certainly is to pick up where we left off, as I assume most other industries will. As I pointed out, our entire organization has been built up around the automobile business, and it is our intention therefore to go back into it when automobiles are again manufactured.

Q. What other changes, if any, have occurred on the Great Lakes since the last hearing in this proceeding which have a direct bearing on the availability of vessels for the transportation of automobiles, particularly after the conclusion of the present war?

A. There has been a very material change on the lakes within the past few weeks. You will recall that during the last hearings, there was a great deal of discussion concerning the bulk cargo carrier situation. By that I mean, prior to 1940 the bulk cargo carriers were utilized for the transportation of automobiles.

622 Q. You mean by that, do you not, that they were put on the spar decks of the bulk cargo carriers?

A. Yes, sir.

Q. Continue.

A. The automobile carriers under charter arrangements had the spar decks of the bulkers made available to them for the transportation of automobiles. This of course gave us a large pool of vessel space. These bulk cargo carriers always considered themselves exempt from regulation under the theory that they were contract haulers. Because of the pending water legislation in Congress which finally took the form of Part III of the Interstate Commerce Act, the bulkers were hesitant about carrying automobiles on their spar decks because of the theory that such carriage would jeopardize their claim that they were contract carriers, and therefore exempt from regulation. For this reason there were no automobiles carried on outside bulkers. We of course carried automobiles on the spar deck of our bulker fleet.

In March of this year the Interstate Commerce Commission, by its decision in the Columbia Transportation Company contract carrier application, Docket W-773, caused a complete change in the situation. In that decision the Commission found that the Columbia Transportation Company, and others in a like category, were common carriers in the transportation of commodities generally, except of course where they transported commodities

623 in bulk in full cargo lots for one shipper. To the extent that the bulk cargo carriers have been found to be common carriers, there is no longer any danger of automobile transportation on the spar decks affecting their status. As a result of that decision, we have contacted several of the bulk cargo carriers and negotiated with them for the carriage of automobiles on their spar decks, when and as automobiles are again manufactured and transported.

I can say that we have found a very receptive attitude on the part of the bulk carriers. As a matter of fact, our handling with one of the larger carriers has gone beyond the negotiation stages, and has practically reached a final settlement, the only thing that is left being the drawing up of the formal contract. This particular arrangement will make available to us a fleet of not less than ten boats. In addition to this one particular fleet, we have under way negotiations with other bulkers, and, all in all, we are pretty sure of having available to us when automobiles start moving, not less than thirty boats, with a reasonable certainty of more boats than will actually be required for the transportation of automobiles throughout the year, including the peak periods.

Right here, when I refer to peak periods, I am of course referring to the peak periods of the past. I do not know, and I doubt whether anybody knows, if there will be peak periods in the future, or how and when automobiles will be manufactured
624 and tendered for transportation after the war. My own personal opinion is that for a good many years the manufacture will be stabilized without changeover of automobile production, and that automobiles will roll off the assembly lines without the hills and valleys as shown on the transportation charts included in the previous exhibits in this case.

Q. Now, Mr. Hewitt, do you have any other statement that you desire to make for the record?

A. Not beyond again stating, at the risk of repetition, the fact that the Nicholson-Universal Steamship Company is known as a specialized carrier of new automobiles, and, with the cessation of hostilities, the Nicholson-Universal Steamship Company intends to see that, for such tonnage as may be offered to it for transportation over the lakes, vessels are available to adequately handle such tonnage which may be offered.

Q. Do you believe that you will be in a position to make available to the trade, the shipping trade, all of the facilities that will be required during the postwar period?

A. We do; yes, sir. We feel that we will be able to take care of the situation as it may unfold from month to month, or from year to year, as well in the future as we have in the past.

Mr. EISEN. That is all.

Exam. MCGRATH. Cross-examine.

Cross-examination by Mr. FOSTER:

625 Q. Mr. Hewitt, you applied for and recently obtained from Division 4 of the Interstate Commerce Commission, a report giving you not only automobiles, but general commodities, did you not?

Mr. EISEN. Just a moment. I object to that. We did not apply for general commodities.

Mr. FOSTER. Well, under the application which you filed, and under the testimony which was introduced——

Exam. MCGRATH. Do you know what the number of that docket is?

Mr. FOSTER. W–357.

Exam. MCGRATH. What is the date of the report?

Mr. FOSTER. May 15th, 1943.

Exam. MCGRATH. Now, Mr. Reporter, will you go back and read the question, please.

(Question read.)

A. I don't just exactly recall the phraseology of the application, as far as that is concerned, but I would assume——

Exam. McGRATH. We have reference to it.

Mr. FOSTER. Yes.

The WITNESS. All right.

Exam. McGRATH. That is sufficient.

Mr. FOSTER. Yes; that is sufficient.

The WITNESS. All right, sir.

By Mr. FOSTER:

Q. Now all that you have, as far as the five ships that were
626 sold to the War Shipping Administration are concerned, is a gentleman's agreement, as you have described it, that they will work out some deal with you after the war, if it can be worked out between the parties; is that correct?

A. No, sir; that is not correct. I think that it goes a little beyond that. In my capacity with the company I have had pass over my desk certain exchanges of correspondence, which will show that it goes beyond any mere conversational stage.

Q. But you do not have any definite written option, or any definite written agreement of any kind with the War Shipping Administration, outlining any basis on which you can reacquire those five vessels, do you?

A. There is no written option.

Q. That is what I say.

A. No.

Q. No. So that all that you have is conversation with somebody connected with the War Shipping Administration concerning the matter; that is right, is it not?

A. No, sir; that is not correct. Let me repeat what I stated to you before, that it goes beyond the conversational stage. As a matter of fact we have a rather complete file of correspondence with respect to the understanding.

Q. Have you been advised by the War Shipping Administration that when vessels are purchased by them they can dispose of them at public auction?

A. I have not been advised by anybody to that effect; no, sir.

627 Q. You have not?

A. No.

Q. You know, I take it, do you not, with respect to the Columbia decision that came out in March, or the report which came out in March, that the effective date of the order which accompanied it has been extended, and that the matter is going to be reconsidered by the full Commission?

A. Why, as I understand it, there is further evidence to be submitted, and the case is going to be reopened; yes, sir.

Q. And they were the only operator of bulk boats in Cleveland that even made application under Part III of the 1940 Transportation Act, were they not?

A. I would not know that.

Q. You do not have any definite agreement with any bulk operator as to the use of its vessels after the emergency, have you?

A. Well, we certainly do have a verbal understanding, and you might call it an agreement, as to their desires and their willingness to enter into an arrangement with us for the carriage of automobiles. As I stated before, it has not been reduced to writing, because the negotiations have taken some time, and it has been only rather recently that some of the points were decided upon, but in due course we assume that it will be reduced to writing.

Q. But right at the present time you do not have any
628 agreement with anyone with respect to the use of bulk vessels, either this year, or next year, or after the war, for the transportation of automobiles, have you?

A. I feel very definitely that we do have an agreement, although I will say that we do not have any written agreement.

Q. No.

A. (Continuing) As previously discussed, for obvious reasons.

Q. Now you say that this company has ten vessels. Which company is that?

A. I do not think I care to disclose as to whom I am carrying those negotiations on with. It is a competitive situation, and I am very sure you can realize that the disclosure of that information might prove rather detrimental to myself, or to my organization; and therefore I am very sure that you would not want me to do that here.

Q. But you do not have any contract with them?

A. No written contract; no.

Q. From whom do you think you can obtain the other twenty boats? You say that you expect to have thirty boats.

A. Well, my answer to that question must be the same as I previously made, Mr. Foster, that we have had negotiations with several other companies; but I do not care to disclose here as to just who they are.

Q. But none of these negotiations have resulted so far in anything definite, that has been reduced to writing, on any
629 particular basis; that is correct, is it not?

A. Well, no, sir; that is not quit correct. In other words, the arrangements have been quite definite, in one case, but they have not been reduced to writing.

Q. They have not been reduced to writing in any case, have they?

A. That is true.

Mr. FOSTER. That is all.

Exam. MCGRATH. Are there any further questions of the witness?

Mr. EISEN. Nothing.

Exam. MCGRATH. If not, you are excused.

(Witness excused.)

Exam. MCGRATH. Next witness.

Mr. EISEN. Recall Mr. McMillan.

Exam. MCGRATH. Have you testified previously in this proceeding?

Mr. MCMILLAN. No, sir.

Exam. MCGRATH. Be sworn, please.

JAMES MCMILLAN was sworn and testified as follows:

Direct examination by Mr. EISEN:

Q. State your name.

A. James McMillan.

Q. Your address.

A. 210 Wayne Street, Detroit, Michigan.

630 Q. With what company are you connected?

A. Detroit & Cleveland Navigation Company.

Q. In what capacity.

A. General manager.

Q. What are your general activities and duties as general manager of the Detroit & Cleveland Navigation Company, Mr. McMillan?

A. I have general supervision over all of the operations and office activities of the company, which includes the Accounting Department.

Q. Has there been prepared under your supervision and direction for the purpose of introduction into the record in this proceeding, a balance sheet of your company for the period ending December 31, 1942?

A. There has been prepared, under my direct instructions and supervision, a balance sheet of the company for the year ending December 31, 1942, yes, sir. This balance sheet was prepared for submission to the Interstate Commerce Commission as a part of our annual report, and was not specifically prepared for this particular hearing. The original of this balance sheet is on file in the Accounting Offices of the Interstate Commerce Commission.

Mr. EISEN. May we have this document marked as Protestants' Exhibit No. 38 for identification, please.

(Protestants' Exhibit 38, Witness McMillan, marked for identification.)

631 By Mr. EISEN:

Q. Mr. McMillan, how long has your company been engaged in the transportation of automobiles on the Great Lakes?

A. The Detroit & Cleveland Navigation Company has been engaged in the transportation of freight and passengers on the Great Lakes since 1868. We have engaged in the transportation of automobiles as a specialized division of our freight carriage, since 1933.

Q. What is the present intention of your company with respect to automobile transportation after the conclusion of the present war?

A. The company fully intends to engage again in the transportation of automobiles after the war, to the same extent as, or greater than, we were engaged therein prior to the outbreak of the present conflict.

Q. And what are your present intentions, or the present intentions of your company, relative to supplying available transportation facilities after the war?

Mr. FOSTER. Now, just a moment. I do not believe that this witness, unless he has something to do with the general policy of the company, can testify as to what the intentions or what the plans of this company are after the war. I think he should be asked some preliminary questions, to develop a basis for his answer to that question.

Exam. MCGRATH. Yes.

The WITNESS. I have been instructed, Mr. Examiner, to
632 speak for the company at this hearing, and say that these policies which I have outlined are the policies of the Detroit & Cleveland Navigation Company. My authority is fully competent.

Exam. MCGRATH. Now, you read the last question, please, Mr. Reporter.

(Question read.

A. The company has in the past always supplied the trade with sufficient equipment to take care of the existing needs, and it fully intends to do likewise after the conclusion of the war. At the present time we are operating the steamers Greater Detroit, Eastern States, Western States, City of Detroit III, and City of Cleveland III. These vessels are all combination package freight and passenger vessels, and are all capable of transporting automobiles. In the past we have carried automobiles on these vessels, and it is our current intention to restore the former facilities for the benefit of the shipping public.

By Mr. EISEN:

Q. Do you mean, the former automobile carrying facilities?

A. Yes, sir.

Q. Making available after the war facilities equivalent to your former facilities——

A. Yes.

Q. Prior to the outbreak of the war?

633 A. Yes, sir. In 1941 we operated six combination passenger and freight vessels, and in addition, four freight vessels exclusively, for the carriage of new automobiles.

Q. And it is the intention of your company to make such facilities, or equivalent facilities, available, as they may be required after the cessation of the present hostilities—is that correct?

A. Yes, sir.

Mr. EISEN. That is all.

EXAM. MCGRATH. Cross examine.

Cross-examination by Mr. FOSTER:

Q. Mr. McMillan, how long have you been connected with the Detroit & Cleveland Navigation Company?

A. Since the 4th of July 1934.

Q. Do you know that there is testimony in this record, undisputed, that after the purchase of the Fitch, your company refused to add any additional vessels, and told Mr. McCarthy that if he wanted them, he could add them himself, and he did?

Mr. EISEN. Just a moment.

A. Well, I don't know——

Mr. EISEN. Just a moment, please. Will you read that question, Mr. Reporter.

(Question read.)

Mr. EISEN. What year?

Mr. FOSTER. How?

634 Mr. EISEN. What year are you referring to?

Mr. FOSTER. When he made his additions, first in 1934, and then in 1935.

Mr. EISEN. I object to the question as being without the scope of the direct testimony.

Mr. FOSTER. Mr. Examiner——

Mr. EISEN. Just a moment. The witness has testified as to the facilities that will be made available after the war, and not as to the facilities that were made available in 1934.

Mr. FOSTER. The witness testified that they expected to supply them in the future just as they always had done in the past.

The WITNESS. We expect to.

Mr. FOSTER. And I submit, that certainly opens the thing wide.

Mr. EISEN. He did not say that at all.

Mr. FOSTER. Oh, yes; he did, and the record will bear me out.

Mr. EISEN. No; he did not. He said, "the equivalent."

The WITNESS. I think I can answer the question, if I may, your Honor.

Exam. MCGRATH. All right; go ahead and answer it.

The WITNESS. I think I can answer it by saying that it is our intention to supply the service, service that will adequately meet the demand, whatever it may be, in so far as we
635 are capable of doing so.

By Mr. FOSTER:

Q. But you know as a matter of fact, do you not, if you have been there since 1934, that from 1934 on, the facilities had to be supplied by the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company because of the attitude of your company, which said that it would not invest any further money?

Mr. EISEN. I object to the question.

By Mr. FOSTER:

Q. You know that, do you not?

Mr. EISEN. Just a moment.

By Exam. MCGRATH:

Q. Are you familiar with that situation, Mr. Witness?

A. Yes; certainly.

Exam. MCGRATH. All right.

A. I differ with you there, Mr. Foster. Mr. McCarthy did not supply the service. Mr. McCarthy happened to own vessels which we chartered and operated.

By Mr. FOSTER:

Q. But he did supply the boats, did he not?

A. Yes, that is correct, but had Mr. McCarthy not supplied them, there were many other places where they could have been readily obtained.

Q. Are you familiar with the earlier testimony here, that that matter came up in connection with an agreement that Mr. McCarthy had to supply additional boats?

A. I think that was true; yes.

636 Q. Yes. Now, who authorized you to testify here that it is the policy of the Detroit & Cleveland Navigation Company that it will invest as much money as may be necessary in adding to its facilities as they may be needed in the future?

A. The president of the company, who in turn derives his authority from the board of directors.

Q. You know as a matter of fact, do you not, Mr. McMillan, that the board of directors has not passed any resolution with respect to what it is going to do in the way of adding transportation facilities in the future?

A. No.

Q. You do not know that?

A. No, sir; I do not. I am not a director of the company.

Q. Are you secretary of the company?

A. No.

Q. Assistant secretary?

A. No.

Q. What is your capacity, again?

A. I am general manager of the company, as I testified previously.

Q. Yes. So that all you know about that situation, then, is what somebody else has told you; is that right?

A. Yes, sir; I would say that that is correct—well now, just a moment. I think you ought to limit that question. Just what do you mean; all I know about what?

637 Q. All you know about the policy of the company, as far as the future is concerned, is what somebody else has told you; that is correct, is it not? You have no personal knowledge of that yourself, have you?

A. No, sir; that is not true. I have a personal knowledge about it because I am kept in touch with any discussions that have to do with settling the policy.

Q. But you say that the person who told you that that was to be the policy of your company, was the president of the company.

A. Yes.

Q. And you say that the president derives his authority from the board of directors.

A. Yes.

Q. Yes. So that——

A. I said, he is responsible to the board of directors.

Q. But so far as the policy of the company is concerned, the only thing that you know about that is what somebody else has told you. Now that is correct, is it not, according to your own testimony?

A. I enter into any discussions which have to do with setting the policy. I enter into discussions as to policy, as far as the policy of the company is concerned.

Q. Well now, that does not answer my question, Mr. McMillan. I wish you would answer my question, please.

638 A. That question, the way you have asked it, cannot be fairly answered by a yes-or-no answer, and I do not propose to attempt to answer it that way, Mr. Foster.

Mr. Foster. Well then, if the Examiner please, in view of the testimony of the witness, I think it is quite obvious that he is merely testifying to hearsay testimony, and I therefore move that his entire testimony be stricken from the record.

Mr. Eisen: Just a moment.

Mr. FOSTER. If they are going to put anything into this record with respect to the future policy of this witness' company, then I think we ought to have the man in here who knows something about it, and can testify to it directly, and let us cross-examine him.

Mr. EISEN. Now, just a moment.

Mr. FOSTER. I move that all of the testimony be stricken out, if your Honor please.

Mr. EISEN. Oh, no.

Exam. MCGRATH. The testimony is received, subject to that objection.

Mr. FOSTER. It certainly is.

Mr. EISEN. Just a moment. What was the ruling of the Examiner, please?

Exam. MCGRATH. I say, the testimony is received, subject to that objection.

Mr. EISEN. All right.

Exam. MCGRATH. Is there further cross-examination?

639 Mr. FOSTER. Yes.

By Mr. FOSTER;

Q. You have never attended any meeting of the board of directors when the policy of your company for the future was discussed, have you?

A. Yes.

Q. You have attended such board meetings?

A. Yes.

Q. Were any resolutions passed at such board meetings determining what the policy of your company was going to be after the war?

A. Not directly with respect to the carriage of new automobiles; no, sir.

Q. You never heard the carriage of new automobiles after the war even discussed in one of your board of directors meetings, did you?

A. No.

Mr. FOSTER. That is all.

Exam. MCGRATH. Are there any further questions of the witness?

Mr. EISEN. I have none.

Exa. MCGRATH. If not, you are excused.

(Witness excused.)

Mr. EISEN. I do not know whether the record shows my offer of Protestants' Exhibit No. 38 for identification, in evidence, or not.

640 Exam. MCGRATH. It is received.

(Protestants' Exhibit 38, Witness McMillan, received in evidence.)

Exam. McGRATH. Next witness.

Mr. EISEN. That is all.

Exam. McGRATH. Does that complete the presentation on behalf of protestants?

Mr. ELDRED. I would just like to ask, if the Examiner please, that the Commission take judicial notice of the service that is offered by the railroads between the points involved in these applications, as indicated by the tariffs on file with the Commission. Do you have any objection to that, Mr. Foster?

Mr. FOSTER. None whatever; no, sir. I think the Commission will do it, anyway.

Mr. ELDRED. Thank you.

Exam. McGRATH. Is there any further testimony to be offered by the protestants? (No response.) No response. Is there any further testimony in the nature of rebuttal?

Mr. FOSTER. I believe not, Mr. Examiner, but will you give us just a half a moment, please.

Exam. McGRATH. Certainly.

Mr. FOSTER. I would like to ask Mr. McMillan just one or two further questions, if I may, your Honor.

Exam. McGRATH. Yes.

641 Mr. FOSTER. Is he still here?

Mr. EISEN. No.

Exam. McGRATH. Has Mr. McMillan gone?

Mr. EISEN. Yes.

Exam. McGRATH. The witness has left the hearing room.

Mr. FOSTER. Well, never mind, then, we will just pass it.

Exam. McGRATH. Is there anything further, then?

Mr. FOSTER. We have no rebuttal.

Exam. McGRATH. That concludes the testimony, then. Do the parties desire to file briefs in this case?

Mr. FOSTER. Yes, if the Examiner please, I would desire to file a brief. I would appreciate it very much if you could give us more than the usual thirty days.

Exam. McGRATH. For what reason?

Mr. FOSTER. I am right in the middle of a number of labor negotiations, and I do not know how long they are going to take.

Exam. McGRATH. That is something which is actually in progress at the present time, is it?

Mr. FOSTER. Yes, sir; it is, and then we also have hearings set ahead. I would like to have at least forty-five days, if that can possibly be done. There is also the matter of the time when we will receive the transcript, Mr. Examiner. Because of the conditions

under which I understand the reporters have to work, most of the transcripts are being delayed in delivery, and necessarily so.

642 Exam. McGRATH. We will fix the brief date as July 21st, 1943. Now, gentlemen, generally there is no proposed report in a proceeding that is had on further hearing unless one is specifically requested. What is your pleasure with regard to that in this matter?

Mr. FOSTER. Oh, we would like very much to have a proposed report, as far as we are concerned, your Honor.

Exam. McGRATH. Does anybody else join in that request?

Mr. EISEN. I am very sorry, Mr. Examiner, but I did not hear. What is this, now?

Mr. FOSTER. The matter of a proposed report. The Examiner inquired as to whether or not we wanted a proposed report.

Mr. EISEN. It is immaterial to me, as far as I am concerned. Either way.

Mr. FOSTER. It is always very difficult to write a brief, and argue the matter later on, if you do not have a proposed report.

Exam. McGRATH. Very well, then; it is understood that there will be a proposed report in this proceeding.

Mr. FOSTER. Thank you.

Exam. McGRATH. Is there anything further, gentlemen? (No response.) If there is nothing further, let the record show that the hearing is closed.

(At 3:10 p. m., June 4, 1943, hearing closed.)

643 *Exhibit 33*

WAR SHIPPING ADMINISTRATION
1319 Terminal Tower
CLEVELAND, OHIO

MAY 29, 1943.

T. J. McCARTHY STEAMSHIP COMPANY,
419 West Woodbridge Street, Detroit, Michigan.

GENTLEMEN: For your information during 1943 the War Shipping Administration requisitioned the Steamer "Wm. F. Fitch" and all the fleet of the Great Lakes Transit Corporation for title and removed them to salt water. They also requisitioned the Steamer "Greater Buffalo" for title and she has been converted into an aircraft carrier for the Navy and is operating upon the Great Lakes.

The War Shipping Administration also purchased from the Overlakes Freight Corporation the following ships which are now being operated as bulk carriers on the Great Lakes: S. S. "Penob-

scot," S. S. "Coralia," S. S. "Sonoma," S. S. "Crescent City," and S. S. "Fred L. Hewitt."

Very truly yours,

(Sgd.) ROBERT D. SMITH,
Robert D. Smith,
Regional Manager.

644 *Exhibit 34*

INTERSTATE COMMERCE COMMISSION

No. 28162

NICHOLSON UNIVERSAL STEAMSHIP COMPANY OWNERSHIP (INTEREST OF THE NEW YORK CENTRAL RAILROAD COMPANY IN NICHOLSON UNIVERSAL STEAMSHIP COMPANY)

Submitted April 20, 1943. Decided May 10, 1943

On further hearing, prior report, 248 I. C. C. 43, found that the New York Central Railroad Company does not now have control of, or interest in, the Nicholson Universal Steamship Company within the meaning of section 5 (14) and section 1 (3) of the Interstate Commerce Act. Proceeding discontinued.

Appearances noted in prior report.

REPORT OF THE COMMISSION ON FURTHER HEARING

BY THE COMMISSION:

In the prior report in this proceeding, 248 I. C. C. 43, decided October 6, 1941, the Commission found competition to exist between the New York Central Railroad Company and the Nicholson Universal Steamship Company and that the New York Central has had and now has control of and otherwise has had and still has an interest in Nicholson Universal, within the meaning of Section 5 (14) and section 1 (3) of the Interstate Commerce Act; that no application has been filed by the New York Central under section 5 (16) seeking authority to continue to have such control and such interest; and that such control and such interest constituted and constitutes a violation of section 5 (14) of the act. We provided that unless voluntary steps were taken by respondents to effect discontinuance of the unlawful relationship within 90 days, further action would be considered. The effective date of the findings was postponed from time to time, and on May 4, 1942, we reopened the proceeding for further hearing to determine whether the finding in the report "that there is actual competition for traffic between the New York Central and Nichol-

son Universal" should be modified. On January 15, 1943, we broadened the scope of the further hearing to include the question as to whether any modification should be made in the finding "that the interest of the New York Central in Nicholson is such an interest as is contemplated by section 5 (19) of the Interstate Commerce Act and section 5 (14) of the Transportation Act of 1940."

In addition to the New York Central and Nicholson, respondents include Securities Corporation of the New York Central Railroad Company, Linden Securities Corporation, United States Freight Company, Overlakes Freight Corporation, and two
645 of Nicholson's subsidiaries, Spokane Steamship Company, and Universal Terminal Company (Cleveland). At the time of the prior report, Nicholson was operating boats on the Great Lakes in competition with the New York Central, particularly in the transportation of automobiles. The chain of interest was as follows: New York Central owned all the capital stock of Securities and had a claim against it for over $14,000,000 advances for purchase of U. S. Freight stock. Securities in turn had a similar claim against Linden (assigned in trust to B. H. Meyer). Linden was record owner of 49 percent of the stock of U. S. Freight (likewise deposited, with right to vote, with the above trustee). U. S. Freight owned over $3,000,000 in debenture notes of Overlakes, with contractural restrictions, including the right to name certain of the directors of Overlakes. Overlakes owned and still owns the capital stock of Nicholson. U. S. Freight held a $1,000,000 mortgage on the property of Nicholson, and the stock of Nicholson as collateral. In addition to the vessels it owned and operated, Nicholson owned the stock of the Universal Terminal (Cleveland), a dock at Detroit, and had a lease on a dock at Milwaukee, guaranteed by U. S. Freight.

On September 23, 1942, Nicholson sold five of its vessels to the United States Government (Maritime Commission) for $1,000,000 cash. With the cessation of the automobile traffic due to the war, its remaining vessels are engaged in the hauling of bulk traffic with which there is little, if any, competition with the New York Central. The competition between the two companies is now very largely potential, depending largely on the resumption of the automobile traffic.

On October 21, 1942, pursuant to agreement entered into between U. S. Freight and Overlakes, Nicholson and their subsidiaries on August 31, 1942, Nicholson paid U. S. Freight $1,020,000 in cash, deeded it the dock property at Detroit, and transferred to it all its shares in Universal Terminal in consideration of which U. S. Freight cancelled the mortgage and released the stock held as collateral, cancelled the debentures and gave up the re-

strictions, including the right to name directors, so that the directors of Overlakes, Nicholson, and their subsidiaries are now entirely different from those of U. S. Freight or its subsidiaries.

The only contractual relation between U. S. Freight and the Overlakes-Nicholson group of companies consists of the following: Overlakes owed Universal Terminal (now a subsidiary of U. S. Freight) $109,000, and, on September 29, 1942, executed a note for this amount to Universal Terminal, with a mortgage on two of the remaining vessels. Universal thereupon endorsed the note and mortgage to the Chase National Bank for $100,000 cash, less the customary discount. U. S. Freight has given Overlakes-Nicholson an option to lease the Cleveland terminal, as, if, and when automobile transportation is resumed. U. S. Freight is still the guarantor of the lease which Overlakes-Nicholson has on the docks at Milwaukee.

646 Thus by a cash payment (derived largely from the sale of certain of its vessels to the U. S Government), the transfer to U. S. Freight of its dock at Detroit and its stock in Universal Terminal at Cleveland, Overlakes-Nicholson has freed itself from any control or interest by the New York Central or affiliated corporations. Under the circumstances, it does not appear that the endorser, guarantor, or option relations remaining constitute "control or interest" within the meaning of the act.

Respondents also point out that the former officer of the New York Central, who was president of U. S. Freight at the time of the prior hearing died on July 31, 1941, and his successor is a man who has devoted his entire business life to the U. S. Freight organization. On November 25, 1941, the Securities Corporation was dissolved and its assets transferred to the New York Central. The officers and employees of the latter, pursuant to direction of its president, now treat U. S. Freight and its subsidiaries as if they were independent of the New York Central. However, the primary change disclosed on further hearing is the break in the chain of interest between U. S. Freight and its subsidiaries, on the one hand, and the Overlakes-Nicholson companies, on the other.

On further hearing, we find that the New York Central Railroad Company does not now have control of, or interest in, the Nicholson Universal Steamship Company within the meaning of section 15 (14) and section 1 (3) of the Interstate Commerce Act. The proceeding will be discontinued.

647 *Exhibit 35*

INTERSTATE COMMERCE COMMISSION

WASHINGTON,

APRIL 24, 1942.

Offices of Claude R. Porter, Commissioner.

Mr. JOSEPH B. EASTMAN, *Director,*
Office of Defense Transportation,
Washington, D. C.

DEAR MR. EASTMAN: In your letter to Acting Chairman Aitchison of April 22, you state that, because of the war emergency and the need to convert vessels to uses of primary importance, The Great Lakes Transit Corporation has been requested by your office to remove eight of its vessels from the regular trade and devote them, for the period of the war emergency, to the transportation of grain. You further state that while the carrier is willing to do this, the result will be that it will be forced to discontinue serving points and transporting property which it was engaged in serving and transporting on January 1, 1940. The carrier wishes some assurance that, by complying with your order, it will not forfeit any rights inuring to it under the "grandfather" clause of section 309 of part III of the Interstate Commerce Act and under its duly filed "grandfather" application.

Division 4 has been delegated authority by the Commission with respect to the adjudication of operating rights of common and contract carriers by water subject to part III of the act. I have discussed this matter with the other members of the division and I am authorized on behalf of the division to state that interruptions of service by water carriers subject to the act, which directly result from compliance with any request or requirement made by you pursuant to the provisions of Executive Order 8989, dated December 18, 1941, which established the Office of Defense Transportation, will be recognized by us as interruptions of service beyond the control of the carrier. Under the statute a carrier does not forfeit its so-called "grandfather" rights as a result of interruption of service made necessary by causes beyond its control.

You are authorized to make such publication of this letter as you may think desirable, and we will arrange to place it on our press table on April 28, 1942.

Yours very truly,

(S.) CLAUDE R. PORTER,
Claude R. Porter,
Commissioner.

Exhibit 36

Witness: Lyons

Great Lakes Transit Corporation, statistical table of operations by above carrier and Minnesota-Atlantic Transit Company

1 Year	2 GLT tonnage	3 MAT tonnage	4 Total tonnage	5 GLT frt. rev.	6 MAT frt. rev.	7 Total frt. rev.	8 GLT W. L. opr. expenses	9 MAT W. L. opr. expenses	10 Total W. L. opr. expenses	11 GLT net income	12 MAT net income	13 Total net income
1916	2,577,883		2,577,883	4,469,327.95		4,469,327.95	2,741,705.30		2,741,705.30	570,465.59		570,465.59
1917	2,338,912		2,338,912	4,246,011.55		4,246,011.55	3,067,188.63		3,681,188.63	378,112.60		378,112.60
1918	1,493,112		1,493,112	3,636,564.97		3,636,564.97	2,942,836.11		2,942,836.11	924,624.70		924,624.70
1919	1,106,319		1,106,319	3,058,964.01		3,058,964.01	2,414,670.16		2,414,670.16	819,520.22		819,520.22
1920	1,751,740		1,751,740	4,543,466.51		4,543,466.51	3,884,399.60		3,884,399.60	815,079.55		815,079.55
1921	1,091,955		1,091,955	3,953,918.66		3,953,918.66	3,134,810.99		3,134,810.99	917,460.26		917,460.26
1922	1,466,962		1,466,962	4,731,786.72		4,731,786.72	3,760,203.89		3,760,203.89	1,019,622.27		1,019,622.27
1923	1,919,506	5,780	1,925,826	5,699,971.40	36,289	5,706,260.40	4,658,783.65	47,451	4,706,234.65	596,850.41	*16,605	580,245.41
1924	1,577,663	189,355	1,767,018	4,430,534.01	601,853	5,022,387.01	4,149,525.54	747,645	4,897,170.54	302,437.07	*220,586	81,850.07
1925	1,382,360	277,052	1,659,412	4,027,718.42	910,450	4,938,168.42	3,717,589.07	1,144,475	4,862,064.07	495,867.41	*341,751	153,816.41
1926	1,761,852	335,752	2,097,604	4,509,960.80	835,345	5,345,305.80	4,100,608.10	972,496	5,073,104.10	405,695.08	*215,908	189,697.08
1927	1,626,383	334,319	1,954,702	4,674,386.87	870,733	5,545,119.87	4,309,950.94	1,099,757	5,409,707.94	385,531.95	*147,360	238,171.95
1928	1,691,386	293,363	1,984,749	4,837,536.62	1,021,180	5,848,716.62	4,587,702.48	1,205,540	5,793,242.48	242,043.45	*241,980	63.45
1929	1,588,611	315,854	1,904,465	4,041,279.57	1,344,736	6,186,015.57	4,457,244.26	1,483,339	5,940,583.26	97,622.77	*98,964	*1,341.23
1930	1,248,900	274,523	1,523,423	3,933,800.14	1,210,356	5,144,156.14	3,800,433.88	1,109,277	4,909,710.88	29,635.11	*11,087	18,548.11
1931	980,793	271,055	1,251,848	3,463,525.88	1,200,560	4,664,105.88	3,002,444.56	1,018,852	4,021,296.56	220,853.75	118,238	339,101.75
1932	896,107	202,061	1,098,168	2,995,214.61	917,141	3,912,355.61	2,572,442.54	877,725	3,450,167.54	123,951.93	*16,878	107,073.93
1933	942,038	259,368	1,201,306	3,151,184.43	1,175,454	4,326,638.43	2,719,107.71	1,004,580	3,723,687.71	209,676.08	165,048	*144,628.08
1934	784,509	211,956	996,465	2,514,970.92	955,478	3,470,448.92	2,672,628.40	1,028,469	3,901,097.40	*506,055.38	*71,276	*577,331.38
1935	975,913	334,489	1,310,402	3,145,049.72	1,566,190	4,711,239.72	3,124,187.38	1,449,866	4,574,053.38	*165,630.03	*508,817.30	*78,795.03
1936	1,036,445	373,244	1,409,689	3,181,676.23	1,641,649	4,823,325.23	3,587,965.95	1,579,441	5,167,406.95	*508,817.30	*8,617	*517,434.30
1937	911,642	346,660	1,258,302	2,661,402.19	1,609,827	4,271,229.19	3,037,668.57	1,661,355	4,699,023.57	*428,607.21	*100,004	*528,611.21
1938	844,442	313,286	1,157,728	2,752,087.16	1,369,415	4,121,502.16	2,891,517.42	1,400,973	4,292,490.42	*317,045.71	*41,651	*258,696.71
1939	965,241	332,983	1,298,224	3,277,374.25	1,513,493	4,790,867.25	3,294,200.78	1,563,836	4,858,036.78	*148,601.71	16,778	*131,823.71
1940	927,242	295,141	1,222,383	3,132,245.91	1,277,252	4,409,497.91	3,111,293.17	1,450,230	4,561,523.17	*70,835.84	*79,537	*150,372.84
1941	960,251	300,592	1,260,843	2,880,782.00	1,236,519	4,117,301.00	3,418,908.00	1,753,530	5,172,438.00	*264,379.00	*45,909	*310,288.00

*Red figures.

NOTE.—Revenue figures include freight revenue only as carried in W. R. I., Schedule 310, Annual Report Form K. Waterline operating expenses reflect only freight expenses as carried in Schedule 311, Annual Report Form K. Net income figures are those reported to I. C. C. as Item 46, page 301, and do not reflect mere freight operating income.

Exhibit No. 37

Witness: Lyons.

Great Lakes Transit Corporation, table of gross revenue, expenses, and net results of operations in total and divided between named lakes served, for years stated below

	1936	1937	1938	1939	1940	1941
Freight revenue—Lake Michigan	$1,622,699.43	$1,049,383.29	$1,305,837.72	$1,465,350.45	$1,311,406.46	$685,456.01
Freight revenue—Lake Superior	1,604,417.63	1,581,599.27	1,446,152.43	1,828,591.95	1,767,412.65	2,498,430.26
Freight revenue—Lake Erie	None	150,389.17	82,840.86	18,621.78	80,572.14	63,104.60
Passenger revenue—Lake Superior	461,597.36	None	None	None	None	None
Total revenue	3,688,714.42	2,781,371.73	2,834,831.01	3,312,570.18	3,168,451.25	3,247,050.87
Freight expenses—Lake Michigan	1,998,031.21	1,303,351.44	1,566,608.63	1,781,082.35	1,430,537.58	937,396.11
Freight expenses—Lake Superior	1,685,299.88	1,652,559.26	1,309,523.52	1,595,488.33	1,654,671.13	2,449,450.01
Freight expenses—Lake Erie	None	175,297.49	110,193.29	15,542.78	97,602.96	104,583.77
Passenger expenses—Lake Superior	488,102.27	None	None	None	None	None
Passenger expenses—Idle Equipment	26,098.36	78,770.73	65,551.28	69,058.43	36,385.42	None
Total expenses	4,197,531.72	3,209,978.94	3,051,876.72	3,461,171.89	3,239,287.09	3,511,429.89
Net result—Lake Michigan—Freight	*375,331.78*	*259,968.15*	*260,770.91*	*315,785.90*	*139,071.12*	*271,940.10*
Net result—Lake Superior—Freight	*80,882.25*	*70,960.01*	*136,628.91*	*233,103.62*	*112,741.52*	*48,980.25*
Net result—Lake Erie—Freight	None	*24,908.32*	*27,352.43*	*3,079.00*	*8,120.82*	*41,419.17*
Net result—Lake Superior—Passenger	*96,504.91*	None	None	None	None	None
Net result—Idle Equipment—Passenger	*26,098.36*	*78,770.73*	*65,551.28*	*69,058.43*	*36,385.42*	None
Net result (line 7, page 300, I. C. C. annual report)	*508,817.30*	*428,607.91*	*217,045.71*	*148,601.71*	*70,838.84*	*264,579.08*

650 *Exhibit 38*

DETROIT AND CLEVELAND NAVIGATION COMPANY, ANNUAL D. & C. REPORT FOR YEAR ENDED DECEMBER 31, 1942

DETROIT AND CLEVELAND NAVIGATION COMPANY, DETROIT, MICHIGAN, INCORPORATED UNDER THE LAWS OF MICHIGAN

Directors

Manferd Burleigh, President, Ohio Greyhound Lines, Detroit; Charles T. Bush, President, C. A. Strelinger Co., Vice President, Industrial National Bank; Oliver S. Dustin, President and General Manager, Ashley & Dustin Steamer Line; Ernest H. Fletcher, Certified Public Accountant, Fletcher, Van Tifflin, Ross & Lyons; George T. Hendrie, Secretary-Treasurer, Grosse Pointe Lands Company, Detroit; Walter S. McLucas, Chairman, Board of Directors, National Bank of Detroit; James T. McMillan, President; Edward D. Stair, President, F. P. Company; James Turner, Attorney, Angell, Turner, Dyer & Meek.

Officers

James T. McMillan, President; James Turner, Vice President; Oliver S. Dustin, Vice President; James R. Coulter, Secretary-Treasurer; Bernard M. Gordon, Assistant to the President; James McMillan, General Manager; Detroit Trust Company, Transfer Agent; National Bank of Detroit, Registrar.

651 *To the Stockholders of the Detroit and Cleveland Navigation Company:*

We are pleased to submit to you herewith the annual report of the company for the year 1942.

Price, Waterhouse & Co.'s certificate appended to the financial statements attached hereto explains the present status of the two vessels, namely, the steamer "Greater Buffalo" requisitioned August 7, 1942, and the freighter "William F. Fitch" requisitioned July 8, 1942.

The accountants also refer to the revised depreciation rate as applied in the year 1942 and to the amount of earned surplus resulting from the reduction of $2,000,000 in the accumulated depreciation reserve.

The changes in the depreciation rate, the resulting adjustment of the depreciation reserve and the restatement of the earned surplus account have been set up in the financial statements and have been approved by the Interstate Commerce Commission.

The management is directing its business policy to serve adequately with its present facilities the requirements of passenger

and freight transportation between the arsenal cities of Detroit, Cleveland and Buffalo.

We wish to thank the stockholders for their cooperation, also the directors, officers and employees for their loyal efforts. United cooperation of all will best serve the interests of stockholders.

JAMES T. MCMILLAN,
President.

652 *Detroit and Cleveland Navigation Company, a Michigan Corporation, and Detroit and Cleveland Steamship Company*

CONSOLIDATED BALANCE SHEET

Current assets:			
Cash in banks and on hand			$889,730.02
U. S. Government and other marketable securities, at or below cost (quoted market $99,272)			97,900.00
Accounts receivable:			
Freight and passenger accounts		$32,033.94	
Insurance claims, etc		57,667.50	
Distribution from receiver of closed bank, collected January 1943		35,417.41	
Miscellaneous		17,996.60	
		143,115.45	
Less—Reserve for doubtful accounts		10,000.00	133,115.45
Inventories of materials and supplies at cost			91,467.24
			1,212,212.71
Other assets:			
U. S. Government bonds deposited under workmen's compensation laws		49,000.00	
Mortgage note receivable		12,285.30	
Claims against closed banks	$10,735.57		
Less—Reserve	10,735.57		61,285.30
Fixed assets, at cost:			
Land (note 2)		1,427,442.92	
Buildings and wharves (note 2)	818,903.92		
Vessels (note 1)	10,964,346.39		
Other equipment	398,394.03		
Together	12,181,644.34		
Less—Reserve for depreciation	8,497,624.51	3,684,019.83	
Improvements to leasehold properties	251,353.71		
Less—Reserve for amortization	175,070.76	76,282.95	
Spare parts and equipment for vessels		113,831.33	5,301,577.03
Deferred charges:			
Prepaid taxes, insurance, etc			64,431.39
			6,639,506.43

DECEMBER 31, 1942

Current liabilities:		
Accounts payable		40,460.22
Accrued expenses		20,955.66
Unadjusted freight, passenger and other claims		10,535.03
		71,950.91
Reserve for workmen's injury claims		25,000.00
Capital stock:		
Authorized—1,000,000 shares of $5 par value		
Issued or reserved for exchange for old shares—499,500 shares		2,497,500.00
Capital surplus—from retirement of capital stock purchased at less than par and reduction in 1941 of the par value of capital stock from $10 to $5 per share (no change in 1942)		3,249,733.27
Earned surplus:		
At December 31, 1941 (deficit)	($936,110.74)	
Amount transferred from reserve for depreciation of vessels as of January 1, 1942 as approved by the Interstate Commerce Commission	2,000,000.00	
At January 1, 1942, as adjusted	1,063,889.26	
Loss for the year 1942, per statement attached	(268,567.01)	
At December 31, 1942, surplus		795,322.25
		6,639,506.43

Notes

(1) Cost of vessels includes $3,505,637.76 for two vessels requisitioned during the year 1942 by the War Shipping Administration; the amounts to be received therefor have not yet been determined.

(2) Land carried at $455,316.25 and buildings (less depreciation) carried at $93,573.78 are not used in the companies' transportation business.

(3) Fit-out expenses for the 1943 season, estimated by the management at approximately $40,000 have not been provided for in the above accounts.

Detroit and Cleveland Navigation Company and Detroit and Cleveland Steamship Company

Consolidated Statement of Profit and Loss for the Year Ending December 31, 1942

Revenues:		
Passenger		$1,930,899.40
Freight		702,457.88
Rentals, storage, etc		55,013.95
Total revenues		2,688,371.23
Operating expenses		2,743,359.56
Operating loss before depreciation and amortization		54,988.33
Other income:		
Interest dividend from closed bank	$52,263.43	
Interest on bonds, etc	7,619.02	
Miscellaneous	3,952.00	63,534.45
Balance, gain before provision for depreciation and amortization		8,546.12
Provision for depreciation and amortization		277,113.13
Loss for the year, to surplus account		268,567.01

653 DETROIT, MICHIGAN, *March 20, 1943.*

To the Board of Directors and the Stockholders of Detroit and Cleveland Navigation Company:

We have examined the consolidated balance sheet of Detroit and Cleveland Navigation Company and its wholly owned subsidiary, Detroit and Cleveland Steamship Company, as of December 31, 1942, and the related statement of profit and loss for the year then ended. Our examination was made in accordance with generally accepted auditing standards applicable in the circumstances and included such tests of the accounting records and other supporting evidence and such other procedures as we considered necessary.

Included in fixed assets in the accompanying balance sheet is $3,505,637.76 representing the cost of two vessels requisitioned during the year 1942 by the War Shipping Administration. The amounts to be received from the War Shipping Administration for the requisitioned vessels under Section 902 of the Merchant Marine Act of 1936, as amended, have not been determined pending clarification of the law.

By order of the Interstate Commerce Commission dated July 22, 1942, the company was directed to reduce the depreciation rates applicable to certain classes of assets, including vessels, and to apply such reduced rates to the composite cost of the several asset classifications instead of to the cost of individual assets. This revision of depreciation accounting has, with the approval of the Commission, been adopted by the company retroactive to January 1, 1942. Depreciation provided in 1942 under the new method was $20,945 less than would have been provided under the method applied in 1941. Under date of February 27, 1943, the Commission canceled its previous approval of an entry on the company's books writing off the December 31, 1941, operating deficit against capital surplus and, in harmony with the directed reduction of depreciation rates, authorized a reduction of $2,000,000 in the accumulated depreciation reserves with concurrent addition of such amount to earned surplus.

In our opinion, the accompanying balance sheet and related statement of profit and loss present fairly the position of the combined companies at December 31, 1942, and the results of their operations for the year, insofar as they are now determinable under the conditions mentioned in the second preceding paragraph, in conformity with generally accepted accounting principles applied on a basis consistent, except as indicated in the last preceding paragraph, with that of the preceding year.

PRICE, WATERHOUSE & CO.

654 Before the Interstate Commerce Commission

Docket No. W–592

IN THE MATTER OF APPLICATION OF T. J. MCCARTHY STEAMSHIP COMPANY FOR A CERTIFICATE TO OPERATE AS A COMMON CARRIER IN THE TRANSPORTATION OF PROPERTY BETWEEN PORTS ON THE GREAT LAKES

Docket No. W–729

APPLICATION OF AUTOMOTIVE TRADES STEAMSHIP COMPANY TO OPERATE AS A COMMON CARRIER BY WATER.

HEARING ROOM "B,"
INTERSTATE COMMERCE COMM. BLDG.,
Washington, D. C., Wednesday, January 12, 1944.

The above-entitled matter came on for argument before the Commission at 10:00 o'clock a. m.

Present: Commissioners PATTERSON (Chairman), AITCHISON, PORTER, LEE, MAHAFFIE, MILLER, SPLAWN, ALLDREDGE, and JOHNSON.

Appearances: Sparkman D. Foster, Penobscot Building, Detroit, Mich., appearing for applicants. S. S. Eisen, 140 Cedar Street, New York City, New York, appearing for Nicholson Universal Steamship Company. Karl D. Loos, Munsey Building, Washington, D. C., appearing for Detroit & Cleveland
655 Navigation Company. Frank W. Sullivan, 231 South LaSalle Street, Chicago, Illinois, appearing for Great Lakes Transit Corporation.

657 PROCEEDINGS

Chairman PATTERSON: The Commission will hear argument in No. W–592, the T. J. McCarthy Steamship Company, Common Carrier Application, including No. W–729, Automotive Trades Steamship Company Common Carrier Application. Mr. Foster.

Argument of Mr. S. D. Foster on behalf of applicants

Mr. FOSTER: May it please the Commission, I think it will be well to review somewhat briefly for the Commission the history of these two companies.

The T. J. McCarthy Steamship Company is a Michigan corporation, organized in 1935. It is the owner of one specially equipped automobile boat.

The Automotive Trade Steamship Company was organized in 1936 and is the owner of two vessels, formerly automobile boats.

The T. J. McCarthy Steamship Company had a solicitation agreement with the Detroit and Cleveland Navigation Company, which did not expire until 1942. That company also had charters on one of the vessels of the Automotive Trade Steamship Company, which it had the right to renew from year to year. The contract for solicitation of automobiles had been entered into back in 1937 and was in effect during the time that legislation was pending on Part Three of the Act and when it was enacted.

658 The company had operated one of the vessels in the bulk trade up until the end of 1939, and operated somewhat in the bulk trade during the latter part of 1941. It originally filed its applications in May of 1941, seeking rights under the "grandfather" section of the statute. The first proposed report stated that it didn't feel that there were any "grandfather" rights, but did grant certificates or proposed that certificates be granted on convenience and necessity. Protests were filed to that.

Now, the testimony which was offered in February of 1942 was at a time when all arrangements between the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company and the Detroit and Cleveland Navigation Company had been terminated.

An amendment to the original application was filed in October 1941 seeking rights on public convenience and necessity.

The testimony was offered on both the "grandfather" feature and the public convenience and necessity feature.

The proposed report of Examiner Walsh recommended that rights be granted on public convenience and necessity, but that there were no "grandfather" rights, that the company had not been operating vessels on the crucial dates.

Protests were filed to that report by the Nicholson Universal Steamship Company and the Detroit and Cleveland Navigation Company. Division Four reversed the findings of the Examiner.

Subsequently, the companies filed a petition—

659 Commr. LEE. Did Division Four deny the rights, you say reversed the Examiner?

Mr. FOSTER. On 309 (c), on public convenience and necessity.

Commr. LEE. It denied them any operating rights?

Mr. FOSTER. Yes, either under the "grandfather" clause or public convenience and necessity clause.

The company then filed a petition for reconsideration and rehearing, that was granted, and the further hearing was held in Detroit last summer.

The proposed report of the examiner at the rehearing proposed that the applicants be granted rights for one full year after the termination of hostilities, and after the resumption of automobiles, that is, the production of automobiles for civilian use.

The applicants, as well as all of the protestants, filed exceptions to that report.

Commr. PORTER. He recommends a sort of limited convenience and necessity, is that it?

Mr. FOSTER. Yes, he recommends, his precise language——

Commr. PORTER. In my dissent to Division Four I agreed, but without any limitations.

Mr. FOSTER. That is right, you did. You voted dissent to the opinion of Division Four. You felt that a showing had been
660 made under 309 (c) that public convenience and necessity require operation by applicants.

Commr. PORTER. The Examiner granted limited convenience, is that right?

Mr. FOSTER. Yes. He says the Commission should find that until the close of one full navigation season after the termination of the war, and resumption of production and shipment by water of motor vehicles for civilian use, public convenience and necessity will require operation by applicants as common carriers by water of motor vehicles between Detroit and Lake Erie ports.

The early proposed report granted all of the Great Lakes. Your dissent granted not only Buffalo and Lake Erie ports, but the head of the lake ports, that is, Superior.

Not only at the original hearing, but at the adjourned hearing, it was quite obvious to everyone that there were no large number of automobiles being made, motor vehicles, those that there were being made, were being made for the armed services.

Now in 1942, when the application for "grandfather" rights was still pending; the companies' vessels had all been converted to the extent they might be used for the transportation of grain, on the insistence of the O. D. T. The Army approached the Automotive Trades Steamship Company and said that they had these vehicles, and that they should be moved to Buffalo. At that
661 time they said there was no available equipment to move those vehicles. The company, during 1942, actually transported between Detroit and Buffalo 950 vehicles for the Army.

From the time of the original hearing up until the time of the rehearing, the Great Lakes Transit Company had four of its 13 package freighters and one automobile boat requisitioned for ocean service. The Detroit and Cleveland Navigation Company had one of its combination passenger and freight boats requisitioned and later converted to an aircraft carrier, and one single automobile boat was also requisitioned for ocean service.

Since that time four have been returned for war shipping, have been returned to their original condition and are now in the grain trade.

We realized that when these boats were requisitioned, these companies were facing that through no fault of their own. In the case of the Nicholson Steamship Company, they voluntarily sold five of their automobile boats, sold these vessels to the War Shipping Administration, and they were converted for the transportation of iron ore at the request of the War Production Board.

But I don't think a great deal of that is material to the particular point which we have here. We had this company filing its
662 application for these rights in October prior to our getting into this war. It is true that the limited national emergency had been declared at that time, and at the time they filed the application it looked very much as though the production of automobiles would be somewhat normal in 1942. It was only after Pearl Harbor and the almost complete conversion of manufacturers to war materials that it was seen that these automobiles for civilian use would not be manufactured.

At the original hearing, Mr. Brennan of Chrysler, Mr. Hearn of Ford Motor Company, and the Assistant Traffic Manager of the Hudson Motor Car Company, who certainly have an intimate knowledge of transportation of automobiles on the Great Lakes, all testified from their knowledge of the transportation of automobiles and, and the manner and fact that these companies' automobile carriers had transported between 65 and 75 percent of all the automobiles transported by the Detroit and Cleveland Navigation Company, and that the future would necessitate the need for these vessels.

Chairman PATTERSON. Was Universal especially equipped to handle automobiles at the time of the hearing?

Mr. FOSTER. At the time of the first hearing they were. It was after that that they were converted, so they could carry grain.

In that connection, in the fall of 1942, the Great
663 Lakes director of the Office of Defense Transportation Mr. Allwood, told Mr. McCarthy he felt, in view of the quota of the War Production Board furnish, or that two of the larger vessels, the "T. J. McCarthy" and the "George H. Ingalls," should be further converted so that they could handle iron ore. That was done, although they did not transport any iron ore until after October 31, because each had been towing a barge; they had been in the grain trade under the directives, or with the consent of the O. D. T.

Chairman PATTERSON. Are there any vessels on the Great Lakes now so equipped to handle specially——

Mr. FOSTER. Not a single vessel is equipped to handle automobiles except the Detroit and Cleveland passenger and freight vessels, of space not taken up with tourist automobiles they can carry them on the freight deck in limited numbers.

Chairman PATTERSON. Are they equipped with extensions or things of that kind, the same as your boat?

Mr. FOSTER. No; entirely different boat. You drive them on the main deck on a level.

Chairman PATTERSON. They do that on or partly on the boat?

Mr. FOSTER. No, on an ore boat they have to build a tail rack and put it on the top deck. The D. & C. have specially equipped docks at Buffalo and Cleveland, they can handle only a small number of automobiles on the combination passenger and freight vessels.

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The automobile-carrying vessels are such that they have all been devoted to the bulk trade, the "T. J. McCarthy" has been so converted, the Nicholson Universal boats that have not been sold also have been converted, and there are no automobile-carrying boats on the Great Lakes now.

Chairman PATTERSON. Does Nicholson compete with your company, with exactly the same type of equipment, in normal times?

Mr. FOSTER. Yes, they do. Nicholson Universal do exactly the same type of business, have the same type of equipment.

In converting these, Mr. McCarthy did save all the uprights, lumber, etc., so these vessels, in normal times, could be converted back to carriage of automobiles. The small amount of steel taken off them which the War Production Board wanted and took, would not seriously interfere with the reconversion back to automobile carriers of these three vessels.

On the question of public convenience and necessity, which is the part being bitterly fought by protestants, in fact Mr. Eisen suggested that probably the reason the motor car companies are sympathetic to Mr. McCarthy is because he is an old-timer and they want to help him out. It is true that Mr. McCarthy has been intimately connected with the transportation of automobiles by vessel on the Great Lakes since its inception, starting back with the Nicholson Transit Company in 1920.

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It doesn't seem to me, as busy as those men are, directors of traffic, those big motorcar companies, unless they felt this service was actually needed, or was going to be needed when the production of automobiles was resumed, would spend their time and effort testifying. Two of them came to Washington to the original hearing, which was adjourned. Subsequently, they attended the hearings at Detroit. At the rehearing the Pontiac Division of General Motors, Mr. Rogers, also testified that from his knowledge he felt this service would be needed. So I can't conceive of a stronger showing having been made on the question of public convenience and necessity than the testimony of these traffic managers, who certainly know their business, and who represent between 85 and

6 percent of the industry so far as shipping by water is con-
erned. They know that situation.

Commr. LEE. What was the matter with his "grandfather" rec-
rd, was that defective?

Mr. FOSTER. It was so held. I must say I have to agree with that
nder the decisions of the Commission. We thought at the time,
his relations were such with the Detroit and Cleveland Nav-
66 igation Company where he paid a part of the expenses, even
in 194:.

Chairman PATTERSON. At that time he was solicitor?

Mr. FOSTER. He was a solicitor, both of his companies had ar-
angements, charters by which he paid a part of the expenses.
he fact remains, at no time during the "grandfather" company
id these applicants ship these on their bills of lading, they were
ll shipped on Detroit and Cleveland bills of lading, D. and C.
ollected the freight.

Up to the close of the season, until this went into effect, the T. J.
IcCarthy Steamship Company was engaged in the transportation
f bulk commodities on the Great Lakes over these same routes,
30 and 1941, up until the end of 1941 the vessels were used exclu-
vely by the Detroit and Cleveland Navigation Company. Dur-
g 1940 neither of these companies issued bills of lading for any
ommodity in its own name, it was not until the end of the season,
1941, that the T. J. McCarthy Steamship Company actually
ent back into the transportation business at all. That was for a
rain cargo from the head of the Lakes to Buffalo. In fact, it
as from a Canadian port to Buffalo.

I do think, strictly speaking, Division Four is very likely right
saying the T. J. McCarthy Steamship Company had no "grand-
ther" rights under strict interpretation of the act. We did not
file exceptions even to the first proposed report in which it
was recommended that the Commission find the company
had no "grandfather" rights.

But we do feel that their application for convenience and neces-
y had been filed prior to the war and the hearing was held soon
er we went into the war, was held at the time of the year where
re were no vessels being operated on the Great Lakes. It was
d in February when automobiles were simply not moved, the
son does not open normally until around the 15th of April.
simply can't lose sight of the fact that the Act itself says
sent or future. We do know, at the time of the hearing, that
automobile companies had been advised by the War Produc-
n Board and other government agencies that the production of
senger automobiles for civilian use would be very sharply cur-
ed and a short time after that they were further curtailed,

and not even permitted to use up all the parts and materials which they had because they suddenly went into the manufacture of war materials.

The showing which we have made, we feel, justifies this Commission in granting these companies operating rights under public convenience and necessity.

There were two cases, motor carrier cases, where almost exactly this same point was brought up. There is no water carrier case. Division Five, in Jack Cooper, Jr. and Tom Cooper Extension of Operations, decided on May 30, 1942, No. MC–11185,
668 that was an application for extension of rights and it was quite obvious at that time that the production of automobiles which were being used for civilian use, was going to be sharply curtailed. The Commission said at the time of the hearing that 1942 models were expected to be reduced materially. We feel no automobiles were going to be transported for some time due to the war. Nevertheless, we are of the opinion that applicant, having made a case on which we usually grant authority in situations which are of record here, should be granted the authority sought for as presumably they are in no worse a condition than other automobile transporters. In other words, it would be placing undue hardship on applicants to compel them to present their evidence over again after conditions have, or should have changed.

At the further hearing, the Detroit and Cleveland Navigation Company testified, through their general manager, that they would offer the same service they had offered in the past. That they would get vessels. Just how they would get them or where they would get them they didn't know. The general manager said that all he knew about that was what he had been told by someone else. Mr. McGrath allowed that testimony, although the hearing was held at Detroit and the heads of the D. and C. Navigation Company there were available to come in and testify as to what their plans were. We think that testimony was purely hearsay and should be stricken from the records, disallowed.
669 Commr. AITCHISON. Was it in respect to what was going to be done in the future?

Mr. FOSTER. Yes.

Commr. AITCHISON. Can you think of any testimony with respect to what is going to be done in the future that isn't hearsay?

Mr. FOSTER. It could be opinion testimony, he testified what they were going to do. The man who knew was there in Detroit. It is a technical point. The point I wanted to bring out was the testimony was undisputed the solicitation of the McCarthy Company added no business to the Detroit and Cleveland Company,

the President of the Company told Mr. McCarthy his company would not invest any more money in automobile boats. A subsidiary company did buy the Fitch, which was converted into an automobile boat. Thereafter business was expanded, and Mr. McCarthy went out and bought these vessels and turned around and chartered them to the Detroit and Cleveland Navigation Company, after convincing them there would be a need for these vessels.

All that has been terminated, for them to come in, after at one time refusing to add any facilities, having these companies go out, aiding them, to say we don't want this company to have rights, if we need them we will aid the boats, whereas this company had aided the boats, paid for them and they are free and clear.

670 They are in a position to go in and operate in a very short time after resumption of the manufacture of new automobiles for civilian use.

The shippers' testimony, of not only the leading manufacturers but also the common carrier driveaway companies, covering practically all of the middle west, east of Cleveland, and all of the New England states, also testified from their intimate knowledge of the situation that this service would be needed upon return to normal conditions. So we say, that on convenience and necessity we feel that we have made a showing which should entitle us to the certificate.

Chairman PATTERSON. Do you care to reserve any of your time?

Mr. FOSTER. I was going to say I would like to reserve the other time for rebuttal.

Chairman PATTERSON. Mr. Eisen.

Argument of Mr. S. S. Eisen on behalf of Nicholson Universal Steamship Co.

Mr. EISEN. May it please the Commission, to clarify the question of the "grandfather" application, may I state that although the applicants originally sought "grandfather" rights, they did so wholly on the theory that some years ago they acquired certain vessels, three vessels, to be exact; that they converted two of them into automobile carriers, the third being an automobile carrier.

What Mr. Foster didn't tell you was those vessels were

671 acquired and converted for one purpose only, to charter and lease them to the Detroit and Cleveland Navigation Company. That, and that alone, was the purpose of the applicants' investment in the vessels, they admit that. They never engaged in transportation as a common carrier. They never desired to take on the burden of a common carrier, they merely acquired these vessels for chartering or leasing to the Detroit and Cleveland

Navigation Company. The Detroit and Cleveland Navigation Company alone was a common carrier. The Detroit and Cleveland Navigation Company. "grandfather" rights on the operation of these vessels and its other vessels.

The applicants, because of the provision of Section 302 (e) of the Act, which provides the chartering or leasing of vessels to a carrier is an exempt transaction, have admitted since the original hearings that they do not possess "grandfather" rights and have waived claims to "grandfather" rights.

Now Mr. Foster has referred to certain motor carrier cases which are clearly distinguishable from the situation herein. We should all bear in mind that the established "grandfather" Lake lines at all times in the past made available to the shipping public the transportation facilities adequate to carry the tonnage. True, of the transportation facilities so made available there were three of the applicants' vessels, but they were operated by the
672 common carriers. When Mr. Foster says those vessels were acquired because the D. and C. said they would not invest in vessels, he doesn't tell you the full story. A Detroit and Cleveland official told Mr. McCarthy, when Mr. McCarthy suggested investing his money in the vessels, that if he did so, if McCarthy did acquire those vessels, that the D. and C. would not acquire vessels of their own and put McCarthy's boats out. In other words, if Mr. McCarthy acquired these vessels, the Detroit and Cleveland would operate them and Mr. McCarthy would have no fear of having his vessels put out, but there is nothing in the record that the established lake lines refused to acquire and supply necessary vessels.

Chairman PATTERSON. Was he employed by the Detroit and Cleveland before he leased the vessels to them?

Mr. EISEN. Yes, he was employed as a solicitor of automobiles, and after working as a solicitor for a short time, he suggested to the company that, I believe it was after the company had put on the steamer "Fitch," an exclusive automobile carrier, that he would make available additional vessels at his expense if the company would not put on any vessels of their own to supplant and put [illegible] vessels out of operation, and the company so agreed.

The investment of the T. J. McCarthy Steamship Company was solely for the purpose of chartering and leasing vessels, not to engage in operations as a common carrier.

673 Commr. LEE. Do I understand Mr. McCarthy actually owned some vessels up there?

Mr. EISEN. He owned three vessels which he leased or chartered to a common carrier.

Commr. LEE. When his lease charter runs out, what is he going to do with it?

Mr. EISEN. He is operating in the boat trade, they can operate in the boat trade without permits, those vessels were acquired solely for charter and lease purposes.

Chairman PATTERSON. The lease has run out some time back?

Mr. EISEN. The lease was terminated with the termination of, when all were reconverted back into bulk carriers.

Mr. McCarthy testified that if he did not secure the rights herein, unquestionably he would continue to lease those vessels to the other lake lines in the future.

Commr. LEE. Under the law, can a man who leases or owns vessels, be required to charter them to somebody else?

Mr. EISEN. No, he can not, but he has no "grandfather" rights, that is clear. Can we interpret the law if anybody who owns a vessel, ipso facto, has rights? If that is the redeeming feature all a man has to do is go out and buy a vessel, or acquire a vessel.

Commr. PORTER. He didn't go out and buy these, he has had them all this time, your illustration isn't very accurate.

674 Mr. EISEN. But he had them for operation as a common carrier.

Commr. PORTER. Your suggestion that any man could get one, saying, simply, go out and buy that, isn't the situation here. This man has had them all the time.

Mr. EISEN. Let me give you a parallel. You grant restricted rights to someone, say, a lumber carrier, why couldn't that carrier come in and say, "Sir, you have granted my certificate to engage in the transportation of lumber, I now desire to engage in the transportation of automobiles, package freight, etc.

Commr. PORTER. That is not a good illustration. These boats also hauled automobiles, he is asking now for the right to haul automobiles, not to change to lumber, grain, or anything else.

Mr. EISEN. You have your owner-operators under the Motor Carrier Act, the Commission has clearly said that two operators are not to get "grandfather" rights, or, two rights under one operation. Why not the motor carriers, so-called owner-operators, hundreds and hundreds who own trucks and lease them to the bona fide carriers. They now come before you and say, "I have owned trucks for the last ten years. You haven't given me any rights under the 'grandfather' clause. I have an investment and I want my investment protected. There is nothing under the law

675 that makes me lease my trucks to the owner."

Commr. PORTER. If 85 percent of the people that have been patronizing it say they are going to be needed for the future, that might make some difference, mightn't it?

Mr. EISEN. I am glad you mentioned that. The so-called 85 percent of the manufacturers—Ford, General Motors, Chrysler, Hudson—certainly are in the trade, to some extent, in this country.

Commr. PORTER. Yes, their testimony showed this, that these vessels were being used, the same number of vessels will be required in the future, we didn't want any diminution of vessel carriers on the Lakes.

Mr. EISEN. Who has said anything about lessening the quantity of automobile-carrying facilities on the Lakes? The established lake lines have always made vessels available. We have said we will make them available in the future as we have established and always made them available in the past. Now, because the war has interfered, are the "grandfather" lines to lose all their rights because the situation has changed?

Commr. PORTER. Nobody is taking away your rights. You still have your rights. You have still got the same vessels you
676 have always had. Nobody is interfering but the competition of the vessels you have been using, to some extent.

Mr. EISEN. If you restricted some of the Detroit and Cleveland Navigation Company boats to exactly the same number of boats they had in the past, this applicant would be restricted to the three boats they used in the past, and maybe the situation would be different. That isn't what you are doing. You are giving them unlimited rights to come in and put in as many vessels as they want.

The record shows in the past the ratio between carrying facilities and tonnage was over-balanced. There was more carrying facilities than automobile tonnage. The Nicholson Universal Steamship Company operated one steamer exclusively as an automobile carrier, the automobile tonnage never being such as to warrant the inclusion of those automobile boats.

One by one these automobile boats were converted into bulk and freight carriers, lessening the carriers of automobiles because there was not enough tonnage.

What you in effect say here is, this man has an investment in vessels. He no longer has an investment as I shall so show. They are not automobile carriers, true. The "grandfather" carriers had an investment in vessels, true. The "grandfather" carriers were entitled to some protection, but let's forget about the
677 "grandfather" carriers. Let's not give them any protection, the established line has their investment, let's close their eyes to this investment. A newcomer in the field of automobile transportation as a common carrier gets predominant consideration, that is in effect what the majority of Division Four and the Examiner recommend denial of, and that is the law, I submit.

Mr. Commissioner Porter's dissent carried very prominently the following language referring to the report and order of Division Four: "Applicants own three vessels, equipped to carry passenger

automobiles." And, in the same paragraph, "* * * but the other two were open-hold bulk freighters, which were later converted into automobile carriers at an approximate cost of $40,000 each."

Prominent consideration was given to the fact that these men had an investment in vessels, that they made an investment in converting those vessels to automobile carriers, but the only shipping conversion of those vessels was not for the purpose of engaging in transportation as a common carrier, but purely for the purpose of leasing and chartering. They did that in the past, regardless of whether or not you deny in the certificate here that they can continue to do so in the future, their investments cannot be impaired. In no way can they be impaired unless you reverse everything you said before, and say that the fact that a man has
678 vessels, the fact that a man has an investment in facilities, ipso facto, constitutes grounds for granting certificates of public convenience and necessity. If you do that, I say that hundreds and hundreds of owner-operators who did not obtain rights from you under Part 2 of the Act are automatically entitled to certificates of public convenience and necessity because they had an investment in carrying facilities over a period of years.

Commr. LEE. Some of us thought they should have been issued authority.

Mr. EISEN. Yes, sir; you did; and you clearly enunciated the law in the Dixie-Ohio case, etc., before the U. S. Supreme Court. It was held that only one carrier, not two, can obtain rights out of the one operation.

Mr. Sullivan has graciously consented to give me five minutes of his time, if I may.

Now, the applicants' case, as originally submitted to the Commission, was predicated on two fundamental factors. One, in the investment in their vessels, which they thought should constitute grounds for the issuance of a certificate. Two, they made a big fuss about the fact that while they had chartered their vessels to the Detroit and Cleveland Navigation Company, the Detroit and Cleveland Navigation Company obviously used those vessels. They used those vessels in carrying certain automobile tonnage.

They therefore continued certain passenger operations by
679 the Detroit and Cleveland Navigation Company bespeaks a future need for the operation of those specific vessels.

This was made despite the fact that the established lake lines at all times made available to the shipping trade adequate shipping or carrying facilities. There has never been a time when it was necessary for a newcomer to come into the field and supply vessels. Bear in mind, these vessels that the applicants own were made

available to the trade by the established lake lines. There is nothing in this record that would sustain the contention that had these vessels not been available, others of a similar type would not have been supplied. As a matter of fact, the record clearly belies it.

The Nicholson Universal Steamship Company's experience in necessitating the convenience of these automobile carriers limiting the carrying capacity of their vessels clearly shows there were always enough automobile-carrying facilities on the lakes.

Our whole complaint has been that there has been a surplus of transportation facilities over the tonnage carried, and for that reason, except when there was an abandonment of automobile production, the established automobile carriers lost money.

Meeting a change on the lakes, applicants sought and were
680 granted rehearings. For the first substantial change, they alleged they had obtained a certificate for temporary authority. Notwithstanding that the issuance of temporary authority doesn't carry with it the promise of a corresponding granting of permanent authority, they urged that fact.

Let us look at the factors underlying the issuance of temporary authority. In 1942 the U. S. Navy requisitioned, as we all know, a large number of vessels, the Great Lakes being no exception. The Detroit and Cleveland Navigation Company at that time was operating in a nightly service between Detroit and Buffalo. The Navy came along unexpectedly and picked up the steamer "Greater Buffalo," and knocked the schedule apart. The schedule was immediately revamped to a tri-weekly sailing. This was the latter part of 1942. The applicants' thereupon, with the assistance of the Army, secured temporary authority to assist over this emergency. That is the purpose of temporary authority. They did carry, in 1942, some 900 vehicles, as Mr. Foster indicated. The season of 1943 came along and the Detroit and Cleveland Navigation Company, as has always been the custom of the established lake lines, established nightly sailings. They were then in a position to carry, did actually carry the entire automobile offering.

There was no need for outside assistance. At the June hearing in
1943 it was clearly established that applicants had not car-
681 ried a single automobile. That is the way the record shows and stands.

Clearly, the temporary authority is no ground whatsoever for the issuance of permanent authority in the future, particularly under those facts.

The second changed situation is the automobile reconversion in the boats. Before applicants can carry a single automobile below decks, they have to reconvert the decks to automobile carriers, and this is the substantial investment they referred to and Mr.

Commissioner Porter referred to in *in* his dissent. In other words, they will have to again invest in order to reconvert their vessels into automobile carriers. Therefore, what will be impaired is not existent today. If it could be impaired, we deny it could ever be impaired because of the nature of the reconversion.

Now, Mr. Foster referred to the fact that Nicholson Universal voluntarily sold five vessels. The truth of the matter is, we are now operating a fleet of nine vessels on the lakes. Title to five of those vessels rests in the U. S. Maritime Commission. We have already undertaken negotiations, as the record will show, to require title after the war. We are still operating that fleet of nine vessels. We are operating it on the Great Lakes.

Now, all of the established lake lines have clearly indicated to the Commisison that they have always been in automobile
682 transportation, that they desire to stay in the automobile transportation field. They have testified and established they have the financial wherewithal to acquire vessels if additional vessels are necessary. They have all testified that after the war, when the need arises, they will put into the service as many vessels as the service needs require. Now in addition to the above facts, there is another factor that I think is worthy of some consideration. That is the Columbia Transportation Company case.

Prior to 1940, the bulkers operating on the lakes made available to the established water lines certain of their facilities through charter arrangements. When the passage of the Water Carrier Act became imminent, the bulkers refused to continue that arrangement because of the fear that it might interfere with their contention that they were contract carriers, exempt from regulations.

Since that occurred, the Commission, by Division Four, issued its report in the Columbia Transportation Company case, since reopened, but I will come to that, in which it found that the Columbia Transportation Company and others similarly situated were common carriers. This changed the situation.

In reargument, counsel for Columbia Transportation Company admitted that they were common carriers and said they did not contest the Division's finding.

Now, holding that such carriers are common carriers,
683 has made available to the established lake lines, through negotiations, particularly to the Nicholson Universal Steamship Company, a fleet of 30 vessels in the post-war era that it can draw upon at any time.

Even without that fleet, the lines, and the record, indicate that sufficient carrying space will be made available with the potentionality of this excessive pool of bulker facilities, that there will

again be brought into play the tremendous excess of carrying facilities over tonnage offered.

Now, in recommending dismissal, the examiner following Division Four's recommendation, has, however, recommended the granting of a so-called temporary authority. I guess that is the proper term to use, I say so-called because it *si* something akin to nothing we have ever had or seen before us. He would recommend that for one full season of navigation, after the termination of the war, which war he doesn't say, European or Asiatic; after the production and shipment of motor vehicles for civilian use.

Commr. AITCHISON. Are we engaged in two wars?

Mr. EISEN. All I can say is what the papers indicate to me, the opinion is that the European war will terminate first, then the Asiatic war. Does the examiner mean after the European conflict terminates, the operating rights should be granted after the Asiatic, both, or what?

684 Now, in granting temporary authority, it is necessary that two requisites be made, immediate and urgent need. What is the immediate need? Obviously there is none, there is no production, the established lines are carrying on, the applicants have temporary authority today in case of any need. There is no immediate need, no urgent need. Why temporary authority?

The examiner recommends the Commission find what he intends, I assume, is that the Commission find an immediate and urgent need, not as of today, but some indefinite, indeterminate future date. He doesn't take into consideration, of course, how many automobiles will be produced in the first year. How they will be shipped. How many automobile boats, how many vessels, will be made available for the carriage of that trade. But he says in order to play safe, let's give these fellows one year, some indeterminate, indefinite date, cause them to make investment in reconversion, then, what will happen, they will say, "Here, we have this investment in automobile carrying boats; therefore, give us permanent authority."

Beyond that Section 311, if I may just finish this one thought, Section 311 of the Act, which is included in the Act by virtue of the second War Powers Act, 1942, permits temporary au-

685 thority, which must expire December 31, 1944. The applicants already have that temporary authority, the full amount. Therefore, if you issue temporary authority beyond that time, then you do something for which, as I see it, you have no underlying congressional authority.

I thank you.

Chairman PATTERSON: Mr. Loos.

Argument of Mr. Karl D. Loos on Behalf of the Detroit & Cleveland Navigation Co.

Mr. Loos. May it please the Commission, I appear for the Detroit and Cleveland Navigation Company, in opposition to the granting of any authority to the applicants.

First, I would like to state just briefly what the situation has been under this temporary authority that has been granted to the applicants in 1942. The McCarthy Steamship Company, under its temporary authority, carried a total of 950 vehicles in 12 loads. In 1943 they carried none. In 1943 the Detroit and Cleveland Navigation Company had its third boat back in service, one of the boats had been requisitioned and not able to get another boat back in service to replace it. In 1943 the Detroit and Cleveland Navigation Company carried some 40,000 vehicles, which represented only about 75 percent of its capacity. So the present needs are adequately met by the existing "grandfather" lines, of
686 which the Detroit and Cleveland is the only one that now has automobile equipped boats in service. The Great Lakes and Nicholson will have the rights under their "grandfather" certificates to engage in this transportation, and will unquestionably engage in it after the war when automobile production is resumed. So there cannot be any possible question that there is no present need for the issuance of a certificate of public convenience and necessity to a newcomer, the T. J. McCarthy Steamship Company.

The only possible point, it seems to me, on which there can be any room for argument and disagreement is as to what the future, as to future needs and what consideration should be given the McCarthy Steamship Company because it does own three boats, two of which had been in the past used by another common carrier in the transportation of automobiles.

First, as to the future needs. I submit it is too early now to issue any certificate of public convenience and necessity on the basis of what the future needs may be after the war is over and after the production of automobiles is resumed. I submit that any decision of that future need ought to wait until we have a better idea of what is going to happen. These three traffic managers that were referred to, of the automobile companies, can't tell any better than you or I what is going to happen after the war and when it is going to happen. Of course, these traffic
687 managers would like to have a surplus of transportation. But that is not the object of this act. If it means anything, it means that it is going to protect the existing carriers. It is going to give them a right to operate without the threat of encroachment by new carriers.

Commr. PORTER. In other words. are we entirely to be stopped from any additions, and so forth?

Mr. LOOS. No, sir. As soon as they fail to provide adequate transportation, you can give anybody the right to come in and provide the additional facilities that may be needed. But until the existing carriers that have "grandfather" rights fail to meet the transportation demand, I submit that if the statute means anything, it means that new carriers aren't to be given certificates of public convenience and necessity to come in and put a surplus of transportation facilities into that field.

Commr. PORTER. Even tho that past or present service may be unsatisfactory to the people that wanted it, that used it, just because the quality isn't there they have to use it, have they?

Mr. LOOS. I agree it has to be satisfactory service. There is nothing in this record to justify the finding that the past service in the transportation of automobiles rendered by the Detroit and Cleveland Navigation Company, the Great Lakes Transit Company and the Nicholson Universal Steamship Company has
688 been unsatisfactory. I submit that you can't make such a finding on this record. First, I say it is too early to make any prognastication into the future and issue a certificate of public convenience and necessity on the basis of an attempt to peer into the future. Nobody can do it. While the Commission probably has the best foresight of anybody in this town or this country, I submit it isn't equal to that task of looking into the future and saying at some time in the indefinite future there may be a need for additional transportation facilities for the transportation of automobiles on the Great Lakes.

Commr. PORTER. Am I to assume you don't have much faith in this post-war planning we hear of?

Mr. LOOS. No, sir; I don't have much faith in this post-war planning. I think it will have to be changed a lot of times before anything is put into effect.

Now, what consideration should be given to the McCarthy Steamship Company because it does own a couple of boats, because they were operated in the past in the automobile business? First, bear this in mind, that these boats that the McCarthy Steamship Company acquired and the other company, I will just treat them as one, these three boats were, in the first place, cargo carriers, they weren't built as automobile boats, they were just plain car-
riers. The McCarthy Steamship Company acquired them
689 and converted them into automobile carriers. And they spent some money on that, true. But they had them in service for a long time and they had some revenue on them. They were chartered to the Detroit and Cleveland Navigation Company,

which operated them as a common carrier. Now then, those two boats which were converted automobile carriers (only two of them were converted), those two boats have been reconverted into ordinary cargo carriers and are in the grain business now.

Now I submit that the McCarthy Steamship Company today is in no different a position than the owner of any bulk cargo carrier may be, after this war is over. When they are no longer needed in the grain trade, they say, "we are going to convert these into automobile carriers, and we are going to come to the Commission and ask for certificates of public convenience and necessity to engage in this transportation of automobiles on the Great Lakes, because for some time in the past (in the present war period), we carried automobiles on the decks of these boats, these grain boats".

I say they are in no different a position than any owner of a cargo boat might be. I say, if they do come to you after this war is over, and you can tell what the present transportation needs are, you should give them no right to participate in this
690 transportation unless at that time the "grandfather" carriers are not meeting the transportation needs. And I believe that there isn't any question at all but what when this war is over and normal conditions are resumed, gradually resumed, as they are resumed the lake lines, the three existing lake lines that have "grandfather" rights, Detroit and Cleveland Navigation Company, Great Lakes Transit Company, and Nicholson Universal Steamship Company, will keep pace with the need for transportation of automobiles. Each one of them is adequately financed. Each one of them knows how to operate. Each one of them is an efficient operator. And those three lines are not going to pass up any traffic. There will probably be plenty of boats available, it is——

Commr. ATTCHISON. Anybody peering into the future now?

Mr. BOOS. Yes, I am peering into the future now. But I won't do it if you won't. If you are going to peer into the future this is what you should see. I beg of you not to peer into the future and deny the application on the ground that it is too early to grant it now on the basis of future need and on the further ground that the mere fact of ownership of these vessels carries no rights.

I thank you.

Chairman PATTERSON. Mr. Sullivan.

691 *Argument of Mr. Frank W. Sullivan on behalf of Great Lakes Transit Corporation*

Mr. SULLIVAN. May it please the Commission, I speak in behalf of that water carrier referred to here, the Great Lakes Transit Corporation. I shall be very brief. In fact, I wish to amplify

upon only one thought which was the one touched upon at the conclusion of Mr. Eisen's remarks. As a matter of fact, we appear here in person in order that you may see that we are alert to the thought that the Commission grant no rights, even under the "grandfather" clause, beyond the traditional experience of the carrier involved and in this instance in particular, that if you do grant temporary rights, they be not granted for any more than the statutory period.

Commr. MAHAFFIE. I thought the temporary rights were now outstanding for the statutory period?

Mr. SULLIVAN. They are. I said for not more than the statutory period. It is to that I shall address mayself.

The Examiner's recommendation, if you will recall, is that temporary rights be granted for a period of one full season of navigation after the termination of the war and the resumption of automobile manufacture and shipment by water. Now, that can extend beyond the statutory period. We ask for a limitation to not more than the statutory period terminating December 31, 1944.

692 Commr. AITCHISON. That period ought to be a pretty good test, shouldn't it, as to whether or not there is a real need for added carriers, besides these regular lines?

Mr. SULLIVAN. That I submit is a test which should be made either within the statutory period, or after its expiration.

Commr. AITCHISON. That is what the Examiner has proposed.

Mr. SULLIVAN. He has granted rights, I maintain, beyond the statutory period. Assume, as your Honor says, that it might be a test, is there anything in the statute which permits you to expand the temporary rights for the purpose of giving a test?

Commr. AITCHISON. Is there anything in the statute which prevents us, when we find future convenience and necessity, from finding that convenience and necessity will exist only for a given time?

Mr. SULLIVAN. I think not.

Commr. AITCHISON. That is the Examiner's proposal, is it not?

Mr. SULLIVAN. Yes.

Commr. AITCHISON. Wouldn't it give you an opportunity for a test so you wouldn't have to do any crystal-ball gazing?

Mr. SULLIVAN. That test could be made without the grant beyond the statute. And I also would like to submit that
693 the period effected by the Examiner is not susceptible of determination for the reason Mr. Eisen touched upon.

Commr. AITCHISON. What is that?

Mr. SULLIVAN. That is one year, forget the one year, a period subsequent to the end of the war plus the resumption of automobile manufacture and shipment by water.

Commr. AITCHISON. There might be some uncertainty about that latter part as far as the end of the war is concerned, that is always declared by Congress, isn't it?

Mr. SULLIVAN. That touches upon another thought I want to make.

It appears that, conceivably, the European conflict will be over before the Asiatic. Let me finish, if you please. And automobile manufacture will be resumed on the Lakes, and the regular carriers will be back in the operation. But because the war is not completely over, the McCarthy Steamship Company permit would permit competitive operation.

694 Chairman PATTERSON. Mr. Foster, you have twenty-five minutes.

Reply argument of Sparkman D. Foster, on behalf of T. J. McCarthy Steamship Company

Mr. FOSTER. I don't know how this test could possibly be made within the year 1944, because under the present regulations on the Great Lakes for the O. D. T. and W. P. B. last year, neither one of these companies were allowed to transport automobiles on the decks of their boats. The O. D. T. would not have granted them a permit even with these operating rights.

Mr. Eisen points out and argues very strenuously, in view of the Columbia Transportation case, there will be a pool of some thirty odd boats available to protestants Nicholson Universal Steamship Company after this war is over. We questioned Mr. Hewitt at length on it at the further hearing and he had no contract with anyone. He thought that possibly something might be worked out. That is how definite that was, but I do think that after the showing that has been made in these cases and after the shipper testimony which we have had in these cases when they start talking about protecting the other old line carriers. Certainly McCarthy, even on the showing he has made here, should deserve protection against the pool of some thirty-odd boats of various companies who have apparently never hauled any automobiles.

695 On the question of conversion of these boats, the testimony shows they will have to be converted back. They were converted to bulk carriers at the urgent insistence of the O. D. T. A large part of his investment on the original conversion was the purchase of all this material which went into the conversion. Part of it was labor. Of course that material is available for the reconversion of these ships. They represent a substantial investment, now stored at the shipyard.

On the temporary rights they talked so much about, both of these companies were still operating at the time they obtained these temporary rights, on the theory they were entitled to operate under their original "grandfather" application which at that time had not been determined. They were in the transportation of grain from the head of the Lakes to Buffalo. The army asked them if they could move these motor vehicles. They said they could. They had been limited in the amount they could move because, of course, they could only move them on the top decks of these vessels, as they passed Detroit, pick them up, deliver them at Buffalo.

We came down, asked for temporary authority, not to transport automobiles, we assumed we had that, we had filed our tariffs, had a "grandfather" application that had not been disposed of, we supposed we had the right to transport automobiles. Until
696 it is decided, we were led to believe that by the Bureau of Water Carriers. We think we did have that right. What we did get temporary right for, and what the files will show we did get temporary rights for, was to transport grain and automobiles on the same vessel at the same time. The Commission granted us special permission to publish rates on grain, which we didn't have to publish unless we did commingle it with automobiles. On one day's notice, that is what that temporary right is, to transport automobiles and grain on the same vessels at the same time between Detroit and Buffalo. That is the temporary right they are talking about. We don't think that gives us temporary right to transport automobiles to Buffalo in full cargo lots of automobiles. It was never our intention to ask for that. All of the counsel completely avoided discussing the question of what the people who need this service and who use this service feel about it. They say that they have always provided transportation for automobiles in the past and they will provide them in the future. We do have to more or less peer into the future in discussing this case. I don't think for a moment lost sight of the fact the application was filed before the war. It came up for hearing almost immediately after we went into the war, and the testimony at that time, when things were, of course, uncertain and we had to peer even further into the future; just as sure as tomorrow is going to come, the automobile industry after this war is over are going to manufac-
697 ture motor vehicles again. They are an aggressive bunch. When they tell us they are going to manufacture automobiles after this war is over, they are going to manufacture them. I think when they tell us they are going to ship them by water, they feel these facilities are needed. I think we should give considerable weight to those people's opinions in the matter, even though it does appear to be looking somewhat into the future.

In a more recent case, decided as late as December by Division 5, this is the case of the Arco Auto Carriers, Inc., Extension, here again we have somewhat the same situation that we had in the Cooper case. The Division said on pages 3 and 4—this decision came down on December 19:

"The examiner found that public convenience and necessity do not require applicant's proposed operation. His finding appears to have been based in a great measure on the fact that since the date of hearing the production of automobiles for civilian use has been discontinued. While the curtailment in the production of automobiles during the national emergency results in a temporary diminution in the demand for the transportation of such commodities, it has not been our policy to deny an application because of the changed conditions resulting from the war, if the evidence otherwise supports a grant thereof. Normal conditions,
including the demand heretofore experienced, are bound to
698 recur, and applicant should not then be expected to incur the cost and delay of a further proceeding."

Division 5 restated in slightly different language exactly what it did in the Cooper case. This case has been pending since May, 1941. We had the original hearing here in Washington. That was adjourned for further hearing in Detroit, which was had after we filed our amended application on convenience and necessity. We have had that hearing and had a still further hearing. We say that under the testimony which was offered in February, 1942, this Commission has a perfect right to grant this company's application on convenience and necessity, because had conditions been normal in 1942, none of these companies, none of the protestants, forgetting for a moment they were losing vessels due to requisition, none of them would have had the facilities to move the automobiles which the industry would have wanted moved.

The Commission further says in this same case, I am citing from sheet 4:

"Rail carrier protestants refer to the admissions made by several of the witnesses that the carriers now serving them have rendered a satisfactory service, and contend that such admissions
establish that existing transportation facilities from and to
699 the points applicant proposes to operate are adequate. With such contention we do not agree. An analysis of the complete testimony of such witnesses reveals that while they have been satisfied with the present service to the extent the available carriers were able to serve them, they do not think that the service now available affords them an opportunity successfully to meet competition and to give the purchasing public the expeditious delivery service desired. We conclude that applicant has estab-

lished that public convenience and necessity require its operation to the extent authorized by the findings herein."

The report said, "the carriers now serving them have rendered a satisfactory service"—right there I would like to say that Mr. Loos challenged you to examine his records and find any fault of the service given by the other carriers. Even with this applicant's vessels the testimony is replete with the cars that were not moved. The traffic manager of Chrysler testified it was necessary to revert to shipping by other means, not by the Nicholson Universal Steamship Company, but from the Detroit and Cleveland Navigation Company. When they say they furnished all these facilities, they simply did not do it, even with these applicants' boats. They go on the theory they did it throughout this case. They did it throughout the Nicholson case, because they had a potential capacity to move so many thousand automobiles, that they
700 had too many boats. The facts show the majority of these automobiles are moved over a five months period, not over an eight months period, which is the normal season over the lower Lakes for automobile boats. There was a six weeks period that practically no automobiles moved. In fact, this record on the showing made by Mr. Hewitt of protestant Nicholson Universal Steamship Company, during the month of August, 1941, just one boat could have moved to all ports on the Great Lakes all the automobiles which they were offered, because it is a seasonal thing. There were no automobiles to be moved during the period of change-over. So if those vessels could have run, and the automobile companies could have given the traffic, they theoretically could have moved all these automobiles, but they couldn't move them on the basis that the industry and the shippers wanted them moved, because they simply could not store them and ship them out by boat at the convenience of the boat owner.

"They contend that such admissions establish that existing transportation facilities from and to the points applicant proposes to operate are adequate. With such contentions we do not agree."

All these protestants go on the theory and stress very strongly that the mere fact there wasn't an immediate need in 1942 for the operation of these vessels to that capacity, and that in 1943
701 they didn't move any automobiles, that should be the basis on which you denied them rights.

This company didn't come in and ask this Commission to grant them convenience and necessity just because they owned three boats. They made a complete showing as to what these boats cost them, what it cost them to convert, but at the hearing, the original hearing in Detroit in February, 1942, they did exactly what I would expect anybody to do in a public convenience and necessity case. They called on the people who used this service in the past and who

would use it upon return to normal conditions. They were the shippers of the automobiles, of 85 to 90 per cent of all the automobiles shipped by water.

In addition to that, the common carrier forwarder group that ships these automobiles by truckaway and driveaway from Cleveland and Buffalo to Pennsylvania and all the New England states, those people testified the length of time for which they would have to wait for automobile boats at Buffalo and Detroit. We say clearly from this record, we are not here asking for any sympathy or anything else because these companies invested in three boats. They invested in these at a time when no one knew what the 1943 Transportation Act was going to be.

We say on the basis of the record, not only the original hearing, but the further hearing, if these shippers say this service
702 will be needed, I don't know who possibly can be a better judge of it. We admit there was no present urgent need for all three of these boats to be in the automobile trade. We know very well if we attempted to convert them into the automobile trade, the O. D. T. and W. P. B. would tell us we couldn't do it. We do say it would work extreme hardship on these companies to have them go through all they have gone through before, at some later date, when under the showing which they have already made they are entitled and this Commission has a perfect right to find that the future convenience and necessity will require this service.

We get back to one other point that has been stressed here. These vessels are bulk carriers and can be converted back or left as bulk carriers. There was not a single automobile carrier in the lake that was not formerly a bulk carrier back in 1925 when all the wooden automobile carriers began to be retired, they started buying boats for conversion into automobile carriers. The old original Nicholson Transit Company bought two little boats. With one possible exception there hasn't been a single vessel purchased and converted to an automobile carrier that wasn't at that time obsolete so far as the bulk trade was concerned under normal conditions.

The two larger vessels of these applicants, to have con-
703 tinued in the bulk trade as such, would have had to have had new stanchions. They were comparatively small carriers anyway. Their former owners sold them, so they could not operate them in the bulk trade.

The same thing was true of all the nine vessels of the Nicholson Universal Steamship Company. The Great Lakes Transit Company converted one of their smaller freight vessels, the Utica, into an automobile carrier. The testimony is undisputed in this case that it could be converted back.

They also said if you deny this application that it could not be ruinous to these applicants. Another point I want to make is that we are not seeking this application with the idea of chartering these boats to the Detroit and Cleveland Navigation Company. The steamship George H. Ingalls was chartered out, not to the Detroit and Cleveland Navigation Company, but to the Cleveland Iron Company who did operate it because they could give a cargo both ways, during 1937 and 1938, and as a bulk carrier. I think the Commission, certainly some of the members of Division 4 will recall in the Nicholson Transit case where two of these same protestants were very active. The M. A. T. Line, since merged with protestant Great Lakes Transit offered Nicholson for underdeck carriage of automobiles $8 and $10 for 1940, and $12 for 1941, to transport these automobiles, then they come in and protest the rates which that company published of $18 and something a
704 car. So to say that this company has got to be placed at the mercy of someone coming along and chartering these boats on whatever basis they want to charter them is simply not fair and not in the public interest. We feel we have made the necessary showing, despite the fact that we have to peer somewhat in the future. We think this case should be decided that these companies should be granted certificates on convenience and necessity.

I thank you.

Chairman PATTERSON. This case will be taken under consideration by the Commission. We will now adjourn.

(Whereupon, an adjournment was taken at 11:15 o'clock a. m.)

Plaintiffs' Exhibit No. 2

Witness McCarthy

RELIABILITY

Established in 1868

Complete insurance coverage from time automobiles are received until delivered to you or your agent at destination port.

DAILY SERVICE

During entire season of navigation; no interruption during model changes.

ADEQUATE FACILITIES
10 BOATS

Largest terminals at all ports. Six combination passenger, automobile and merchandise steamers. Four specially equipped automobile and merchandise steamers.

A Personal, Efficient and

Courteous Transportation Service to the

AUTOMOBILE TRADE

Between

DETROIT—CLEVELAND—BUFFALO

"The Service with a Punch"

"Ship by Ship and Save"

Your Local Agent:

For information, rates and service, phone or write:
D. & C. NAVIGATION CO.
Automobile Division
DETROIT, MICH., OFFICE
T. J. McCARTHY, Manager
W. J. HOFFMAN, General Agent
210 Wayne Street
Phones: CAdillac 9800—
CHerry 6956
BUFFALO, N. Y., OFFICE
J. P. RANAHAN, General Agent
56 Main Street
Phones
Cleveland 7756
Cleveland 8500
CLEVELAND, OHIO, OFFICE
East Ninth St. Pier
Phone, Cherry 9550
NEW YORK, N. Y., OFFICE
10 Rockefeller Plaza
Suite 604
Phone: Circle 6-2797
PHILADELPHIA, PA., OFFICE
2402, 14 Market St.
Phone: Rittenhouse 9868

706 *Plaintiffs' Exhibit No. 3*

Interstate Commerce Commission, Washington

I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Pages 150 to 152, both inclusive; Pages 162 to 226, both inclusive; and Pages 229 to 272, both inclusive; of the transcript of the stenographer's notes of the hearing held September 8, 9, and 10, 1941, at Washington, D. C., and Exhibits No. 1 to 10, both inclusive, filed at said hearings in Docket No. W-732, Nicholson Transit Company Contract Carrier Application, the originals of which are now on file and of record in the office of said Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 24th day of August, A. D. 1944.

[SEAL] W. P. BARTEL,
Secretary of the Interstate Commerce Commission.

707 Exam. GRAY. Is that all, Mr. Eisen?

Mr. EISEN. That's all.

Mr. FOSTER. No further questions, Mr. Holt.

Mr. EISEN. Off the record.

(There followed a discussion off the record.)

Mr. EISEN. Show that upon agreement of all parties Mr. Hewitt has been called out of order to testify.

F. L. HEWITT, Jr., being first duly sworn, testified as follows:

Direct examination by Mr. EISEN:

Q. Please state your name and address.

A. F. L. Hewitt, Jr., Detroit, Michigan.

Q. What is your capacity with the Nicholson Universal Steamship Company?

A. Vice president and general manager.

Q. You have heard the testimony presented in this proceeding so far?

A. I have.

Q. Do you recall a conversation with Mr. Shirley in December of 1940?

A. I recall the conversation with Mr. Shirley which I think Mr. Holt is referring to, but I am not certain it was in December. It was some time after the close of navigation.

Q. Will you please state in your own words exactly what transpired at that time?

708 A. The subject of our conversation was two things and it was very brief.

The first was the question as to my opinion as to whether outside bulk fleets would operate in the season of 1941 and to which I replied that to the best of my knowledge I did not think that they would.

The second was to the effect that he was both anxious to ascertain at that time or prior to the opening of navigation, as to what arrangements could be worked out for the Nicholson Universal Steamship Company to transport cars for the Holt Motor Car Company to Duluth on some arrangement less than called for or provided for by the tariffs issued by the Nicholson Line.

Q. And what was your answer?

A. My answer was that it was not possible to accomplish that.

Q. And was anything further said or done at that conference?

A. The conference was closed with that.

Mr. EISEN. Cross-examination.

Mr. FOSTER. No questions.

Exam. GRAY. That is all, Mr. Hewitt.

Mr. FOSTER. I would like to recall Mr. Holt for just a couple of questions.

CLARENCE L. HOLT resumed the stand and testified further as follows:

709 Redirect examination by Mr. FOSTER:

Q. Mr. Holt, you knew nothing of any attempt that Mr. Shirley was going to make to have any cars transported except under the regular tariffs as published by the company?

A. None whatever.

Q. Have you ever had any discussions with Mr. Shirley at all about having the Nicholson Universal Steamship Company file with the Commission a lower rate?

A. No.

Q. You have never had any discussion with him about the rates?

A. We have always paid the regular rate.

Q. You have always paid the regular rate?

A. Whatever the tariff rate was.

Mr. FOSTER. That's all.

Mr. EISEN. I have no questions. I am not impugning Mr. Holt's testimony at all. That is the reason I suggested he be present. I am not questioning Mr. Holt. I wanted this on the record with full opportunity for everybody to defend himself.

Exam. GRAY. Do you have some more witnesses, Mr. Foster?

Mr. FOSTER. Mr. McCarthy.

T. J. MCCARTHY, being first duly sworn, testified as follows:

Direct examination by Mr. FOSTER:

Q. Will you state your name and address, Mr. McCarthy?

710 Mr. SULLIVAN. You say after it became effective. It became effective the day before.

Mr. FOSTER. After it became effective.

Exam. GRAY. Are protestants ready to proceed?

F. L. HEWITT, Jr., being previously sworn, testified further as follows:

Direct examination by Mr. EISEN:

Q. Will you state your name to the Reporter once again?

A. F. L. Hewitt, Jr.

Q. And your address?

A. Foot of Bates Street, Detroit, Michigan.

Q. What is your present connection with the Nicholson Universal Steamship Company?

A. I am vice president and general manager.

Q. What, briefly, are your duties in that capacity?

A. I exercise general supervisory capacity over the operations of the company in all of its phases.

Q. What is the Nicholson Universal Steamship Company?

A. The Nicholson Universal Steamship Company is a carrier of property by water on the Great Lakes. It is essentially composed of two divisions, the first and by far its most important division is its automobile division. In this category it is a common

711 carrier engaged in the transportation of automobiles by water in regular route service between the ports of Detroit, Michigan, Duluth, Minnesota, and Cleveland, Ohio, Milwaukee, Wisconsin, and Buffalo, New York. We also operate some irregular route services on the lakes which are not important for this proceeding.

Our second division is our bulk division. In this category we transport certain bulk commodities such as coal, grain, ore, etc., in so-called bunkers which we operate on the lakes.

Q. How many vessels does your company operate on the Great Lakes that are, or can be, utilized in the transportation of automobiles?

A. We operate twelve vessels, all of which are being used in the transportation of automobiles on the Great Lakes.

Q. Will you please describe those boats, indicating the automobile carrying capacity of each per trip?

A. The "Woodruff" has a carrying capacity of approximately 450 automobiles; the "Sonoma," 450; the "Coralia," 370; the "Crescent City," 360; these four vessels are specifically and exclusively designed for the transportation of automobiles. They carry no

other freight. We also operate the "Penobscot" which carries as many as 260 automobiles west-bound but which is, at times, utilized for the east-bound transportation of bulk commodities. The "South Park" carries 60 automobiles west-bound and bulk freight east-bound. The "Adam E. Cornelius" which carries 70 automobiles west-bound and bulk freight east-bound; the "Adam E.
712 Cornelius, Jr." carries 70 automobiles west-bound and bulk freight east-bound. The "Sonora" and "Sultana," each of which carry 50 automobiles west-bound and bulk freight east-bound. The "Richardson" can carry 60 automobiles west-bound and would carry bulk commodities east-bound. The "Resolute," which is a barge, operating in conjunction with the "Sonora" or "Sultana," can carry 35 automobiles west-bound and is used in the transportation of bulk commodities east-bound. The last eight vessels which are utilized east-bound for the transportation of bulk freight are commonly known as bulkers on the lakes and hereafter in my testimony when I refer to bulkers I have reference to the vessels which can be utilized for the transportation of bulk cargo. This gives us a total over-all carrying capacity per trip of 2,285 automobiles.

Q. Is your company's operation seasonal in character?

A. Yes; it is limited to the season of open navigation on the lakes which usually runs from April 1st to November 30th of each year. For the balance of the year all the automobile carriers on the lakes are tied up.

Q. Will you briefly describe the piers, wharves, and other facilities owned and operated by the Nicholson Universal Steamship Company?

A. We maintain terminals at the ports of Detroit, Duluth, Milwaukee, Cleveland, and Buffalo. These terminals are all equipped with the latest designed material and equipment for the proper handling of automobiles.

713 Mr. ELDRED. Mr. Examiner, might we just go off the record for a second?

(There was a discussion off the record.)

By Mr. EISEN:

Q. What is the approximate overall investment of the Nicholson Universal Steamship Company in its boats and equipment, terminals and other facilities utilized in the transportation of automobiles?

A. In excess of $2,753,000.00.

Q. What is the approximate number of employees hired by the Nicholson Universal Steamship Company during the season of open navigation?

A. Approximately 700.

Q. Is your operation to the Port of Duluth an important portion of your activities?

A. Yes; the Port of Duluth is of tremendous importance to our entire set-up. Duluth is one of the principal bulk shipping centers on the lakes. We have one of our so-called bulkers in Duluth on the average of at least one every five days. Accordingly, we are able to utilize this boat space in the transportation of automobiles to Duluth and carriage of bulk commodities out of Duluth. This we have been doing for a good number of years. In addition, our automobile operations to Duluth have always constituted an essential part of our entire operations. The transportation of automobiles to Duluth has enabled us to utilize automobile boat
714 facilities that would otherwise be idle. It has enabled us to utilize our automobile carriers which in the absence of the Duluth tonnage would have to be tied up at our docks. Both the tonnage and resulting revenue from the Duluth transportation has been an important element in keeping the Nicholson Universal Steamship Company in operation.

The name and reputation of Nicholson Universal Steamship Company is synonymous with automobile service to dealers and distributors of automobiles at any place on the Great Lakes and Duluth is one of such places. To eliminate Duluth or any other important automobile receiving port on the Great Lakes would have a very detrimental effect on our name and reputation. Duluth is the third largest automobile port on the Great Lakes, and for this reason, as well as other stated reasons, seriously needs our service to the same extent and degree as it has been carried on there in the past.

Q. Have you made a study of the total number of automobiles handled by the Nicholson Universal Steamship Company to all ports for the last few years?

A. I have made a study and have set that study down into an exhibit which bears the caption, "Statement showing total number of automobiles handled by Nicholson Universal Steamship Company to all ports for the years 1938, 1939, and 1940." Obviously the transportation involved in this exhibit is the movement of automobiles from the port Detroit.

Mr. Eisen. May we have that exhibit marked for identifi-
715 cation, Mr. Examiner?

Exam. Gray. I will identify this as Exhibit No. 1.

(Exhibit No. 1, Witness Hewitt, marked for identification.)

Exam. Gray. You offer that in evidence at this time or merely for identification?

Mr. Eisen. Well, either way that is best. I have a number of them; if we are going to accept them as we go along, that is perfectly satisfactory.

Exam. GRAY. Perhaps we had better merely identify them now because there may be some objection to some of them.

By Mr. EISEN:

Q. Have you made a similar study showing the total number of automobiles handled by all Lake Lines to all ports from Detroit, Michigan, for the corresponding years of 1938, 1939, and 1940?

A. I have such a study, which is reproduced in my next exhibit.

Mr. EISEN. May we have this marked for identification, Mr. Examiner?

Exam. GRAY. I will identify this as Exhibit No. 2.

(Exhibit No. 2, Witness Hewitt, marked for identification.)

By Mr. EISEN:

Q. Have you prepared an exhibit showing the percentage of the total lake transportation of automobiles for the years 1938 through 1940 carried by the Nicholson Universal Steamship Company?

716 A. I have, that is my exhibit.

Exam. GRAY. This will be identified as No. 3.

(Exhibit No. 3, Witness Hewitt. marked for identification.)

Mr. SULLIVAN. In that caption there is a star by the word "lines." I take it——

Mr. EISEN. Forget about it.

Mr. SULLIVAN. I suppose you mean the same lines as Exhibit 2?

Mr. EISEN. Yes. That should have been explained in the same manner as Exhibit 2. It is a companion exhibit and therefore No. 3 can either have the same footnote produced on No. 3, or otherwise.

Exam. Gray: It has the same meaning as Exhibit 2?

Mr. EISEN. Yes. It was inadvertently omitted.

By Mr. EISEN:

Q. Have you made a study to determine what your maximum carrying capacity would have been for the year 1940 to all of the ports involved in your previous exhibits if your boats were utilized in their full capacity?

A. Yes; I have made such a study——

Mr. Eisen: May this exhibit be marked for identification?

Exam. Gray: This is identified as Exhibit No. 4.

(Exhibit No. 4, Witness Hewitt, marked for identification.)

Mr. Eisen: The witness will explain it now.

717 A. This exhibit consists of one sheet and is a statement indicating the actual number of automobiles carried on our various vessels for the year 1940. The statement also shows the

number of days the vessels were operated, the number of operating days in the season that the vessels could have operated if we had had sufficient tonnage to fully utilize them, and, in conjunction therewith, the exhibit shows the number of operating days not used because of insufficient tonnage. The exhibit shows the automobile capacity of each vessel per trip and from all of this information we arrive at the conclusion that if the entire unused capacity of the fleet were placed in the Buffalo service, for example, we could have carried in 1940, 87,342 additional automobiles to Buffalo. In the same manner we could have carried 174,685 additional automobiles to the Port of Cleveland. Likewise, we could have carried an additional 29,584 automobiles to the Port of Duluth. These figures, of course, all contemplate that the same number of vessels that we used during 1940 are to be employed and, therefore, the totals do not contemplate the utilization of any other or additional vessels. For the purpose of clarity we have broken the exhibit into two essential divisions, in the first of which we have shown the Nicholson Universal Steamship Company automobile vessels. In 1940 there were a total of 461 boat-days that these six
718 vessels were idle. This really is a staggering figure when it is realized that there were only 252 potential operating days in the season. In other words, there were on an average of two of these automobile vessels tied up each operating day of the season and does not take into account at all our bulk division vessels.

The second division of the exhibit is concerned with the bulk division. The figures that we have obtained in connection with the bulk division are all predicated on twelve days to a trip which is the approximate time required in a round trip Duluth movement. We have not allocated the additional bulker space to the Buffalo or Cleveland services. Had we done so, the total shown for Buffalo and Cleveland would, of course, have been correspondingly increased. Utilization of the bulkers to their full capacity in connection with 40 percent of their operation, which is the average amount of time that they devote to the Duluth service, would have enabled us to carry in connection with these four boats 470 additional automobiles. Utilization of the automobile carriers in the Duluth service only with respect to their unused capacity during 1940 would have enabled us to have carried 29,114 additional automobiles to that port.

In my opinion this exhibit clearly shows that with available equipment, the Nicholson Universal S. S. Company could practically double its present tonnage with its present facilities if it received the freight in a normal manner.

Before leaving the exhibit, I again want to direct atten-
719 tion to the fact that all of the figures are predicated on a

252-day operating season which is a normal period of lake navigation in the automobile trade. For the purpose of clarification, there is one other comment I would like to make in connection with this exhibit and that is that although the total additional bulker capacity shown on the second division of the exhibit actually aggregates 701 automobiles, we have only shown 470 automobiles in the lower division of the exhibit which indicates the unused capacity, because 231 of these automobiles were cars we carried for the MAT Line under interchange agreements filed with the Regulatory Commission.

Q. Now, just for the purpose of clarification, Mr. Hewitt, you mean if you allocated the unused capacity of the fleet in the Buffalo service you would have had that amount of automobiles?

A. That is correct.

Q. You could have carried the additional amount?

A. That is correct.

Q. That if you took the unused capacity and put it in the Cleveland fleet you would have had the amount here shown?

A. That is correct.

Q. You do not mean that you could have carried both Buffalo and Cleveland tonnage?

A. Yes.

Q. If either of the services were used you could have carried so much additional tonnage in that service?

720 A. That's right.

Q. At this time will you please describe the method of operations conducted by the Nicholson Universal Steamship Company, that is, indicate which ships are assigned to which ports?

A. Inasmuch as Nicholson Universal Steamship Company does not maintain any package freight or passenger service we do not operate schedule sailings. Our vessels are dispatched to such ports and with such frequency as the needs of the trade require. We are thus in a position to make available to our customers, at all times, an elastic service. We have always been, and still are, in a position to take care of all needs to any port which might require additional facilities. As a result of our method of operating at any time when there is a sudden accumulation of automobiles moving between ports on any lake, we are in a position to supply that lake with the bulk of our transportation facilities.

Q. Before you further elaborate on that statement, Mr. Hewitt, will you please state whether or not you are personally familiar with the other Lake Lines operating in competition with your line in the transportation of automobiles?

A. Yes.

Q. What other lines are engaged in the transportation of automobiles on the lakes and what ports do they serve?

A. The Great Lakes Transit Corp. serve the ports of Duluth, Milwaukee, Buffalo, Detroit, and Erie and Houghton. The
721 Minnesota Atlantic Transit Company operate in service from Detroit to Duluth.

Q. This is all automobile service?

A. That is correct.

The Detroit and Cleveland Navigation Company operates between the ports of Detroit and Cleveland and Buffalo.

Q. Do you know of your own personal knowledge the number of boats operated by the lines just mentioned by you and their over-all capacity?

A. I not only know that information of my own personal knowledge, but in addition I have discussed this with the involved lake lines and have confirmed my own personal knowledge and thoughts with respect thereto.

Q. Will you give us the benefit thereof?

A. The Great Lakes Transit Corp. operates ten vessels which are available for the transportation of automobiles from Detroit during the season of navigation. These vessels have an over-all automobile-carrying capacity of 783 automobiles. The MAT Line operates the Chambers, Gorman, Willard, King, and Jack.

The first three of these vessels have a spar deck automobile-carrying capacity of 50 automobiles each, and the last two—30 automobiles each. The Chambers, Gorman, and Willard could
722 carry up to 100 additional cars between decks and about 100 in the hold. The King and Jack could carry 40 cars between decks.

The D. & C. operate the Fitch, Mead, Tremaine, and Ingalls which are automobile boats and have an overall carrying capacity of 1,255. In addition to these four boats, the D. & C. also operates six so-called passenger vessels which have a potential automobile-carrying capacity of 520 additional automobiles.

Q. What is your purpose in testifying about lines operating on Lake Erie and to ports other than Duluth?

A. The availability of vessels of competitors to and from other ports lessens the requirement for additional vessel space at ports such as Buffalo, Milwaukee, etc., and makes more vessels or space available for the Detroit-Duluth service. Our operations, as I previously indicated, are elastic and our boats are available at any point, lake or port, that may require them.

Q. You have already indicated, Mr. Hewitt, that your operations are seasonal in character because of climatic conditions on the lakes. There has also been some discussion as to peak and slack movements. Will you please give us a complete picture thereof insofar as your line is affected?

A. Not only is our transportation necessarily confined to seasonal operations, but it is further confined by the peculiarities of the manufacture and transportation of automobiles. When
723 the lakes thaw in the early spring there is not a uniform ice-free lake situation in all years. Some years the lakes are available for navigation earlier than others. Accordingly, in the early part of March dealers begin accumulating their automobiles for shipment in Lake Erie and toward the latter part of March for shipment in Lake Superior. Severe winter conditions which delay opening of navigation will cause a tremendous accumulation of automobiles at Detroit, from which moves, by far, the greatest bulk of automobile traffic. Past experience definitely establishes, however, that navigation to the Port of Cleveland is possible at least two weeks prior to navigation to other ports. This gives us two weeks to clean up the Cleveland accumulation. The opening of the Port of Cleveland also makes possible the shipment through Cleveland of a great deal of tonnage that would normally move through the port of Buffalo and which, upon the opening of Buffalo normally reverts to transportation through Buffalo. So that, as a matter of fact, when weather conditions make it possible for transportation through the Port of Duluth, a very large part of accumulation is cleaned up insofar as Lake Erie is concerned. With the cleaning up on all accumulations we pass the principal peak about the beginning of June because of the slackening of automobile production, which causes a pronounced downward swing in automobile transportation beginning in June, continuing until the bottom is reached in last August.

On this point, in order to more graphically illustrate the
724 situation I am now explaining, I would like to introduce into evidence three exhibits, which are graph indicating in the first the movement of automobiles from Detroit to Duluth for 1939 to 1940; in the second the same information from Detroit to the Port of Cleveland, and the third the same information from the Port of Detroit to the Port of Buffalo.

Mr. SULLIVAN. We have a reference, first, second, and third. That ought to be identified.

Mr. EISEN. Yes. We have the first, Detroit to Duluth.

Exam. GRAY. Off the record.

(Discussion off the record.)

Exam. GRAY. The exhibit now before us will be identified as No. 5.

(Exhibit No. 5, Witness Hewitt, marked for identification.)

Mr. EISEN. Exhibit No. 6 is the graph Detroit to Cleveland.

(Exhibit No. 6, Witness Hewitt, marked for identification.)

Mr. EISEN. Exhibit No. 7 is the graph Detroit to Buffalo.

(Exhibit No. 7, Witness Hewitt, marked for identification.)

Mr. EISEN. First is Duluth, No. 5; second, Cleveland, No. 6; third is Buffalo, No. 7.

The WITNESS. Referring momentarily to the Buffalo ex-
725 hibit which, because of the tremendous volume thereat, more completely portrays the situation I have just been discussing; it can be readily seen that the tremendous drop in automobile transportation caused by the slackening of automobile production commences at the beginning of June and reaches its bottom at the end of August. The same chart indicates that the latter part of July, the entire month of August, and early part of September constitutes the slack season in the automobile business. It is during this slack period that the automobile factories are setting up machinery and otherwise preparing for the change-over in production for the purpose of introducing the new models. During this period practically all of our automobile vessels are tied up at Detroit. Even though the numbers of automobiles being tendered for transportation during this slack season are such as to make the operation of automobile vessels unprofitable, we, nevertheless, fulfill our obligation as common carriers and transport any and all automobiles tendered to us to the respective ports regardless of revenue losses incurred as a result thereof. Obviously a contract carrier would not perform such service. It could, and undoubtedly would, take the cream of the traffic during the peak seasons when it could run with full boat loads and would leave the common carriers the unprofitable and undesirable small lot automobile transportation.

Mr. FOSTER. I move that that answer be stricken as
726 absolutely a conclusion and having no proof to back it up whatever. This conclusion as to what a contract carrier could do is purely a conclusion on the part of the witness.

Mr. EISEN. This is all his opinion, and it is prefixed with that remark, it is his opinion. And he keeps saying he thinks.

Exam. GRAY. Yes; it was offered that way and it is quite clear that it is his opinion, Mr. Foster.

Mr. FOSTER. All right.

The WITNESS. Commencing with the latter part of August the factories start turning out the new models and by the time the end of September is reached there is again a large quantity of automobiles being tendered for transportation on the lakes. This so-called peak season continues to the middle of November when it starts tapering off and by the time the end of November is reached the quantity of automobiles tendered for transportation has dwindled considerably.

It is appropriate to observe at this time that if we compare the graph for Buffalo with the graph for Duluth we will find that in the middle of November when the Buffalo traffic has passed its

peak and is on its downward grade the traffic to Duluth is on its upward grade. As a matter of fact, there was no fall Duluth tonnage in 1939 to talk about.

By Mr. EISEN:

Q. During the peak season of 1940 which according to your graphs indicated that you handled more automobiles
727 than you did in 1939, what was your record with respect to congestion and accumulations of automobiles on your Detroit piers?

A. I would say that our record was exceedingly good. I have prepared an exhibit showing the day-by-day number of automobiles on hand at Detroit destined to Buffalo, Duluth, and Cleveland. This tabulation constitutes my next exhibit.

May that 3-sheet exhibit be identified as Exhibit No. 8?

Exam. GRAY. No. 8.

(Exhibit No. 8, Witness Hewitt, marked for identification.)

By Mr. EISEN:

Q. Do I understand that this exhibit begins with May 1st because your graph indicates that it was not until May 1st that a real peak was reached?

A. That is correct.

Q. Have you any comments that you desire to make in conjunction with this exhibit?

A. This exhibit consists of three sheets. In the first column there is shown the date in 1940. The second column shows the number of automobiles on hand at Detroit at 7:00 A. M. destined to Buffalo. The third column shows the number of automobiles dispatched that day. As indicative of the manner in which the exhibit works, we find that on May 1st at seven o'clock in the
728 morning there were on hand at Detroit six automobiles destined to Buffalo. During the course of that day we received a number of automobiles sufficient to have enabled us to dispatch 345 on May 1st and still have left over on the morning of May 2nd 567 automobiles. No boat was dispatched to Buffalo on May 2nd and on May 3rd we accumulated 835 automobiles——

Mr. SULLIVAN. That is the accumulation of the previous day?

Mr. EISEN. That is the total accumulation on hand at 7:00 a. m.

The WITNESS (continuing): Which in conjunction with the automobiles we received during the course of that day, enabled us to dispatch 1,060 automobiles which resulted in 783 automobiles remaining on our docks at 7:00 a. m. on May 4th.

No boat was dispatched from Detroit on May 4th. On May 5th, 783 automobiles were on hand at Detroit at 7:00 a. m. During the course of that day, we dispatched 441 automobiles. On the morning of May 6th prior to 7:00 a. m. we dispatched another

boat which took out 376 automobiles and cleaned up all Buffalo cars on the dock. With this explanation, I think that the exhibit is self-explanatory other than that I want to indicate that the next two columns show a similar story with respect to Cleveland shipments and the last two columns portray the story as to Duluth.

By Mr. EISEN:

729 Q. Now, Mr. Hewitt, those blank spaces every seventh day, does that indicate Sundays?

A. Yes.

Q. So every seventh day when you have a blank space that indicates Sunday mornings and no automobiles were received during the day.

A. In viewing this exhibit, it should be observed that the ideal operating set-up in the transportation of automobiles on the lakes, particularly with respect to transportation of automobiles on the lakes, particularly with respect to transportation such as that conducted by us, requires that there be accumulated on the dock on any one day as close to 1,000 automobiles as possible. This makes economical the dispatch of two automobile carriers on the one day. Reference to the exhibit indicates that even during the peak seasons we are seldom able to accumulate an early morning quantity aggregating the desirable quantity of 1,000 automobiles.

I also think this exhibit clearly indicates the capacity of our company to handle not only the quantity of automobiles that has been tendered to us in the past, but a quantity greatly in excess thereof. It clearly portrays the difficulties that the common carrier operating in this business on the lakes has in handling the constant fluctuations in tonnage offered, the need to operate during certain periods at a loss and the concurrent need to handle sufficient business during the peak months to offset those slack

730 months. It indicates to some extent that if any quantity of tonnage is taken off our peak seasons and we are confronted with semipeak and slack seasons only, as would be the case if this tonnage were divided among more carriers, that we could not stay in business.

Q. Mr. HEWITT, will you please refer to page 3 of your Exhibit No. 8. I note that around or beginning with the 12th and 13th, that you show an abnormal number of "on hand" automobiles as compared with the previous records. Will you explain why that situation occurred?

A. Well, there has been some testimony, Mr. Eisen, as to the storm conditions that we had on the lakes in November of 1940. And to the best of my recollection this occurred either on the 11th of November or on the 13th, I don't recall at the moment.

Q. Well, was that a severe storm?

A. It was a very severe storm; in fact, I believe it has been classed as one of the largest and worst and most severe storms the lakes ever experienced. There were several lives lost and several vessels lost that certainly caused many heartaches in our organization.

Q. Did that result in tie-ups?

A. Yes; it resulted in the management tying everything up until the storm was over.

Q. Would you say that accounted for the large accumulation of on-hand automobiles as shown on page 3 of your exhibit?

731 A. Yes.

Q. Have you made a study of the movement of automobiles on the lakes for that portion of 1941 up to August 1st of this year as compared with the movement for the corresponding periods of 1938, 1939, 1940?

A. I have.

Q. Have you shown this data on an exhibit?

A. I have in my next exhibit a comparison of the tonnage that the Nicholson Universal Steamship Company carried on the lakes for the period April 1 to August 1, 1941, as compared with the same period for the years 1938, 1939, and 1940.

Mr. EISEN. May that exhibit be identified as No. 9?

Exam. GRAY. No. 9.

(Exhibit No. 9, Witness Hewitt, marked for identification.)

Q. What comments have you to make with respect to this exhibit?

A. This exhibit clearly shows that the total tonnage offered to the Nicholson Universal Steamship Company for transportation during 1941 is substantially in excess of that tendered during preceding years. While the exhibit merely shows the situation with respect to Nicholson Universal Steamship Company, a proportionate increase in tonnage is being experienced by the other lake lines and this exhibit may be considered as representative of the entire picture. Because of the increase in tonnage in 1941,

732 particularly the extent thereof, I firmly believe that in later years we shall look back at 1941 and call it an abnormal year. In my opinion the tremendous increase in automobile production and distribution is due to increased consumer demands caused by desires to beat the defense shutdowns, to beat the defense taxes and other matters of a similar character. I firmly believe that it will be many many years before there is a repetition of a comparable number of automobiles tendered for transportation. However, our record for the abnormal 1941 years is a clear indication of our ability to carry all of the automobile tonnage made available to us.

In this connection I have prepared as my next exhibit a statement showing the day-by-day record at Detroit of Duluth automobiles for the year 1941 up to August 1st.

Mr. EISEN. May the exhibit be distributed which consists of three sheets, and be identified as Exhibit No. 10?

Exam. GRAY. No. 10.

(Exhibit No. 10, Witness Tewitt, marked for identification.)

By Mr. EISEN:

Q. Proceed, Mr. Hewitt.

A. In the first column there is shown the date. In the second column is shown the number of Duluth automobiles on hand at Detroit at 7 o'clock in the morning. The third column shows the number of automobiles dispatched from Detroit. The last column shows the bulkers and capacity thereof which
733 were available on the shown dates but which could not be utilized because of lack of automobile tonnage. In addition to the bulker space being available the "Coralia" was not utilized in any service until April 8th because of insufficient tonnage.

The "Penobscot" made its first voyage on April 28th——

734 By Mr. EISEN:

Q. You said April 28th. Did you hear Mr. Gwatkin's testimony that after April 15 there was no available tonnage on the lakes?

A. I did.

Q. And that boat was tied up not only on April 15th but up to——

A. April 28th.

Q. Proceed.

A. The "Sonoma" on April 20th——

Q. And the "Sonoma" was likewise tied up through the 15th to the 20th?

A. That's right.

Q. What are the reasons for this tie-up?

A. There was no tonnage available to put them in service.

Q. Proceed.

A. The "Woodruff" on April 8th; the "Sultana" made its first trip on April 10th; the "Sonora" on April 9th; the "Cornelius, Jr." on April 10th; the "Cornelius" on April 18th; the "Richardson" on April 13th and the "Resolute" on May 2nd. Obviously before the dates mentioned all of these boats were tied up and available to engage in any service for which sufficient tonnage was available. On July 16th the "Sonoma" with an automobile capacity of 450 cars per trip was tied up because of inadequate tonnage and remained tied up through August 1st. If sufficient tonnage had

been offered, the "Sonoma" could have been utilized in the Duluth service during that period.

735 Q. Have you endeavored to determine to what extent the transportation of automobiles on the lakes will be curtailed in 1942 and subsequent years?

A. The possible curtailment of production of automobiles and the attendant limitation on the quantity thereof that will be transported via the lakes is, of course, a matter of deep concern to us and I have made every possible endeavor to determine what the situation will be, particularly for the next few years. We have been given to understand that the 1942 production will be at least 50 percent less than 1941. We are unable to secure any assurances that the production will not be further curtailed. As a matter of fact, my own personal opinion is that curtailment of automobile production will go below the 50 percent mark.

Q. You mean compared with 1941?

A. Correct.

As a matter of fact some of the distributors of automobiles are already notifying their dealers to expect during 1942 no more than 40 percent of their 1941 consumption.

Q. What is the significance of the statement you have just made?

A. It is of the utmost significance when it is borne in mind that Nicholson Universal Steamship Company is not a package freight hauler. Our transportation is confined entirely to automobiles and of course bulk cargo freight which is not here

736 involved. So that while it may be true that with the curtailment of automobile production the factories will produce other and various defense materials, because of our previous confinement to the carrying of automobiles alone we shall be precluded from handling general merchandise which is the description that will undoubtedly cover the new defense materials. Obviously we could not load on our boats the type of tanks now being manufactured in Detroit nor naval guns or anything of that category.

Q. You mean manufactured by the automobile firms such as Chrysler?

A. I do.

By the same token, the Nicholson Transit Company is seeking rights to transport automobiles only. If the present production is cut down to 50 or 40 percent and that production is divided among the existing lines to the exclusion of the Nicholson Transit Company, we shall still find it difficult to keep our heads above the water. Giving a substantial portion of this business to the Nicholson Transit Company, a newcomer in the field, makes it even more difficult for us to survive.

Q. And is it your opinion that if the Nicholson Transit Company is in the picture as a contract carrier with the attendant advantages of rates that it now possesses, that it will secure the advantage of such freight as is now being tendered?

A. There isn't any question about it.

737 Mr. FOSTER. I move that that question be stricken until there is a tender to show there is an advantage in rates.

Mr. EISEN. I will withdraw the question.

By Mr. EISEN:

Q. In your opinion, if the Nicholson Transit Company is permitted to remain in the picture as a contract carrier, and assuming that the Nicholson Transit Company has a rate advantage, is it your opinion that the Nicholson Transit Company will be given the first preference in the routing of the automobile tonnage?

A. It is.

Mr. FOSTER. Just a moment.

I object to that question on the ground it is a hypothetical question, and not based on the evidence in the record. You may develop that later, but to ask a hypothetical question based on what the facts may or may not develop——

Mr. EISEN. Subsequent witnesses will develop that. If it is necessary for me to call Mr. Hewitt back and waste a lot of time I will be glad to do it. I see no reason why he cannot answer on the assumption.

Exam. GRAY. The answer will be accepted.

Mr. FOSTER. With the understanding that if it is not borne out the question and answer will be stricken?

Mr. EISEN. I will withdraw it if it is not borne out.

By Mr. EISEN:

738 Q. There has been some discussion concerning the use of bulkers in the past. Will you please state for the record why the bulkers were ever utilized?

A. In the past the bulkers were utilized principally as a matter of economics. The bulkers that operated eastbound in the transportation of grain and other bulk commodities had available cargo-carrying space westbound that was never utilized. They found it exceedingly profitable to carry automobiles westbound at very low figures. The quoted figures were so low, as a matter of fact, as to make it uneconomical to operate our own boats in competition therewith. Accordingly, all of the lines, despite the availability of their own equipment, used the bulk facilities. The bulkers were used both during the peak and slack seasons. The use of the bulkers was by no means caused by shortage of carrier equipment. They were used solely because of the

economics of the situation. Now, of course, when I speak of bulkers who performed this operation in the past, I refer to the use of bulkers operated by the various grain and ore and coal carriers operating throughout the entire Great Lakes district, and also the bulkers operated by private industries.

Q. Now, Mr. Hewitt, what lake or lakes were the bulkers prominently used on?

A. Prominently used in Lake Superior. They were also used in Lake Michigan.

Q. Now, when they were using bulkers in Lake Superior, did you at times have your equipment tied up, no shipments?

739 A. Yes.

Q. And as a result you found it cheaper to tie up your own boats and use the bulkers on Lake Superior?

A. That is correct.

Q. And the use of the bulkers was not occasioned by any shortage of equipment?

A. Absolutely not.

Q. And when the bulkers were out of the picture did you then put into your trade your own boats?

A. Yes.

Q. And since the bulkers have been out of the picture have you at any time encountered a situation where you didn't have sufficient equipment to move the tonnage offered?

A. No.

Q. Are you in a position, at any time, to make available additional carrying capacity for the transportation of automobiles on the Great Lakes?

A. Yes; we are.

Four of our present bulkers, namely, the "Penobscot," "Sonora," "Sultana," and the "South Park" were originally used by us exclusively in the automobile-carrying trade. However, because of the inadequate automobile tonnage tendered to us and the lack of need for so many automobile carriers, we converted all four of these boats into bulkers, using them to transport bulk freight

740 east-bound and automobiles west-bound. This conversion had the effect of greatly limiting the vessel capacity of the boats to carry automobiles. We stand ready, able, and willing, at any time that the automobile tonnage so warrants, to reconvert these four boats back into automobile carriers which would increase their capacity substantially; for example, the capacity of the "South Park" would be increased from 60 to 220; the "Penobscot" from 260 to 300; the "Sultana" and "Sonora" from 50 each to 240 each. As a matter of fact, the "Sonora" and "Sultana" in their original automobile-carrying capacity were tied up at our docks in Detroit idle throughout the entire season of 1935 and

1936. It was in 1937 that we converted these boats into bulk carriers.

Here it might be interesting to note that 1937 was an abnormal automobile year; it ranked second in production of automobiles, and yet the tonnage even there did not warrant the retention of these two boats as exclusive automobile carriers.

Q. And is it your statement, Mr. Hewitt, that at any time there is a shortage of automobile-carrying capacity on the lakes, you are ready, able, and willing to convert those four boats back to their original capacity?

A. We are ready.

Q. Those boats were originally available as automobile carriers?

A. Yes.

741 Q. And the insufficient quantity of tonnage made it unprofitable for you to maintain them in that condition?

A. True. They were tied up, idle at docks, and, there is no profit in that.

Q. But you stand ready, able, and willing to increase your carrying capacity by the amounts just shown?

A. That is correct.

Q. Is the automobile-carrying business your principal enterprise.

A. It is.

Q. What has been the effect of operations of the Nicholson Transit Company on the activities of the Nicholson Universal Steamship Company?

A. The Nicholson Transit Company operations have had a very serious and detrimental effect upon our operations. In the first place, although the number of automobiles available for transportation for all lines during 1941 has been greatly in excess of that available during 1940, so far this year we have handled considerably less automobiles through the port of Duluth than we did in 1940.

Q. In other words, Mr. Hewitt, although the total number of automobiles being shipped in 1941 is much greater than the total shipped in 1940, the Nicholson Universal Steamship Company instead of increasing its percentage of the total carried, has

742 actually decreased the percentage of the total carried. Is that your testimony?

A. Through the Port of Duluth; yes.

Q. Through the Port of Duluth.

Proceed.

A. A subsequent witness and exhibit will furnish details with respect to this statement. The activities of the Nicholson Transit Company, particularly through their holding out to transport automobiles at rates substantially lower than those of the common

carriers has caused us to make certain reductions in rates via the Port of Duluth which will also be discussed by a subsequent witness.

A subsequent witness will show that in preceding years practically all of our Duluth tonnage was local port-to-port business. We all know that the revenue on local port-to-port business is much more attractive than the revenue obtained by a line on proportional traffic. As a result of the Nicholson Transit Company's operation and its low port-to-port r[illegible] we have lost a great deal of our local port-to-port traffic. This has had the effect of seriously reducing the average of our revenue obtained by us on the Detroit to Duluth operation.

Q. Just one other question, Mr. Hewitt: In 1941 have you increased the number of automobiles you carried through the Port of Buffalo as compared to 1940?

A. Yes; we have.

Q. Did you increase the number of automobiles that you
743 carried through the Port of Cleveland as compared with 1940?

A. Substantially.

Q. It is only with respect to the Port of Duluth that you have lost tonnage?

A. That is correct.

Q. And is Duluth the only port in which the Nicholson Transit Company operates?

A. Yes.

Q. Now, have you encountered any difficulties because of the increased tonnage that you received through the Ports of Buffalo and Cleveland, in operations?

A. In properly handling the tonnage and dispatch thereof, I would say no.

Mr. EISEN. Cross-examination.

Cross-examination by Mr. FOSTER:

Q. Mr. Hewitt, what is the longest period you have operated between Detroit and Duluth?

A. I cannot tell you. I don't have the dates with me.

Mr. EISEN. You mean in one season?

Mr. FOSTER. In one season. That's right.

The WITNESS. I don't have the figures before me.

By Mr. FOSTER:

Q. Ordinarily, the season does not commerce until around April 15th?

A. It will vary according to the conditions. Sometimes it is April 1st, sometimes May 1st.

744 Q. To Duluth?

A. No; the opening of navigation.

Q. Well, you have never operated to Duluth earlier than April 15th, have you, with automobiles?

A. I don't know definitely, but I would say probably not.

Q. Do you recall ever operating to Duluth with automobiles after December 1st?

A. If my memory serves me correctly, I think we did last year.

Q. You think you did last year?

A. That is, we had vessels in the service, but they probably have left Detroit prior to December 1st.

Q. As a matter of fact, last fall you did send out a notice at about the time of this storm in November that you were not accepting any further automobiles for shipment to the head of the lakes, did you not?

A. Due to storm conditions; yes.

Q. So Exhibit 4, when figured on a basis of 252 days, is wholly inaccurate so far as the operation to Duluth is concerned, is it not?

A. No; I think not, Mr. Foster. After all, there were 252 operating days on the lakes and had there been Duluth tonnage available and had we utilized all those days we could have carried the figures as shown through Duluth and in addition, those that we actually handled.

Q. Well, as a matter of fact, you decided about the mid-
745 dle of November, and 30 days before the normal season closes, that you then were not going to accept any further shipments to Duluth?

A. I would like to qualify that and say the elements decided it. It was something wholly unusual.

Q. But on the basis of the elements you did conclude that?

A. Yes.

Q. And not on these graphs which you show here disclose any transportation beyond December 8th—just a moment. Here is one December 10th. And on the graph to Duluth on the movement of your automobiles on the graph that you offer here as Exhibit 5, during both 1939 and 1940 you show your operation as commencing on April 30th—no, April 1st. You show shipments only during the months of April, May, June, July, August, September, October, November.

A. That is correct.

Q. So on your shipments there, you have never operated, since 1939, in any event, prior to the first of April, after November 30th, so far as your Duluth movement is concerned.

A. Well, again, I don't have the records available, Mr. Foster, but if my memory serves me correctly we did operate beyond April 30th last year.

Q. To Duluth?
A. To Duluth.
Q. In the transportation of automobiles?
746 A. Yes.
Q. Well, your graph here just shows transportation up to November 30th?
A. I think I can correct that. Our last departure for Duluth of 1940 was on the 25th of November.
Q. Was on the 25th of November. And normally it takes you about three days to run to Duluth, at the most?
A. Yes. So when I say we were operating after the first, it was on the return from that.
Q. The "Cornelius" and the "Cornelius Jr." were operated last year as bulk vessels?
A. Correct.
Q. And operated to points on Lake Michigan, points in Green Bay?
A. Yes.
Q. So under their normal operations as bulk carriers you cannot conceivably figure out what your capacity would have been in Duluth service when the boats were not available for that service?
A. They were available, Mr. Foster. In fact, in making a study of our records we arrived at a basis actually, from our records, from our arrivals and departures in the Duluth service, of about 40 percent time, in season.
Q. But you wouldn't operate your bulk boats up there just to carry automobiles on deck, would you?
747 A. That is a future question. It is a little difficult to say at this time what we would do. It is personally our bread and butter, and we have, in the past.
Q. You wouldn't operate your bulk vessels to Duluth with just the top deck, without any prospect of return cargo?
A. We have operated our vessels to Duluth with cargo on just the top decks, and no return loads.
Q. But not on your own vessels?
A. Well, it is difficult to say, Mr. Foster. We have sent our own automobile vessels to Duluth with perhaps 50 or 75 or a hundred automobiles without any prospect of a return load.
Q. On your automobile boats?
A. Yes.
Q. Well, you don't have any return loads for those?
A. That is true.
Q. I understand some your exhibits show that up until this year you had a considerable movement of automobiles to Green Bay;

but in your 1941 figures there is no movement at all to Green Bay. Have you discontinued that service?

A. The volume is so small that it is rather hopeless to attempt to continue with the port.

Q. It is about 25 percent of what your Duluth was, is it not?

A. Approximately.

Q. So even as a common carrier when the run becomes unprofitable you just cancel out your tariffs and get off that run.

748 Is that so?

A. No, we have not canceled out our tariffs on any port.

Q. What did you do in connection with the Green Bay situation?

A. I believe there was an embargo placed on it, but I am not certain.

Q. Just placed an embargo on it. In other words, you are no longer running service to Green Bay, are you?

A. No. We are maintaining service to Greey Bay through the Port of Milwaukee.

Q. Which means that the people of Green Bay have to drive their cars or arrange their own transportation from Milwaukee?

A. They do that in any case.

Q. So a common carrier when he finds he cannot operate profitably does what any other reasonable business man will do, he cancels the service. Isn't that so?

A. I don't agree with that.

Q. But you did do it this year on Green Bay?

A. We have not, so-called, abandoned the port. We are providing service to Green Bay dealers through the Port of Milwaukee.

Q. But if the people in Green Bay wanted to get the advantage of your former Green Bay rates, in view of the embargo they simply just cannot get that, they have to ship through Milwaukee or pay the rates by truck or through other lines.

Mr. EISEN. Well, is the rate through Milwaukee higher?

749 Mr. FOSTER. Well, the record doesn't show.

Mr. EISEN. You said it was higher.

By Mr. FOSTER:

Q. I will ask Mr. Hewitt.

A. I am afraid I cannot say without looking at a tariff. I don't recall it.

Q. You don't recall what your Green Bay-Milwaukee rates were?

A. No.

Q. Nor what the rate is from Milwaukee up to Green Bay?

A. From Milwaukee to Green Bay?

Q. Yes.

A. No; I don't.

Q. And do you know what service the customers you formerly served are now using to get these cars from Milwaukee to Green Bay?

A. I do not know in every case. I believe some of them are using truckaway, driveaway.

Q. Now, you spoke of reducing certain of your rates to Duluth on account of this Nicholson competition, so-called. Just what was the nature of this reduction?

Mr. EISEN. Mr. Examiner, the witness already testified that a subsequent witness would have exhibits and go into detail with regard to that.

Exam. GRAY. I think we can dispense with the question at this time.

Mr. FOSTER. Are the other witnesses going into that?

750 Mr. EISEN. Oh, yes.

By Mr. FOSTER.

Q. Well, do you know whether or not, Mr. Hewitt, that after the bulkers had been eliminated, except those that you have under charter and owned, whether or not all of the common carriers to Duluth, even in view of the prospect that this was going to be a very large year, did all increase their rates for the 1941 business by approximately $2 per automobile over their last year's rates?

A. I don't think I can testify for the other common carriers, Mr. Foster.

Q. But did your company?

A. I understand from my traffic department that there has been some fluctuation in rates through Duluth. Just what changes have been involved, why, I think I would rather leave to others.

Q. Your traffic men can testify as to that?

A. Yes.

Q. Now back in 1935 and '36 when the "Sultana" and the "Sonora" were lying idle, you then had available to you these bulkers to handle these automobiles to Duluth?

A. So I understand. That was prior to my being in Detroit, but as closely as I have been able to ascertain from the records, I would say that is true.

Q. And in 1936 you were not even operating to Duluth, were you?

Mr. EISEN. Mr. Examiner, I don't see the relevancy of

751 what happened in '32, '33, '34.

Mr. FOSTER. Mr. Eisen went into this.

Mr. EISEN. I am objecting to anything prior to the grandfather date, or prior to a reasonable time, say 1937. I don't see any relevancy as to the issue of public convenience at the present time, or in the future, as to what happened in '32, '33, or '34, or any such years.

Exam. GRAY. No. It is rather remote.

Mr. FOSTER. Mr. Hewitt has testified, Mr. Examiner, that he had two boats, the "Sonora" and the "Sultana" lying idle with nothing in 1935 and 1936. Now, I want to show that he was not even operating to Duluth in 1935 and 1936, and, Mr. Eisen brought that up.

Exam. GRAY. Well, don't go beyond that period.

Mr. FOSTER. All right. We will go into '35 and '36.

By Mr. FOSTER:

Q. Was your company operating into Duluth in '35 and '36?

A. As I recall, no.

Mr. EISEN. Are you sure of that, Mr. Hewitt?

The WITNESS. I say as I recall. I am not certain of it; no.

By Mr. FOSTER:

Q. In 1937 when you did convert the "Sonora" and the "Sultana" into bulk vessels, you then had available to you this exceedingly low rate given to you by the operators of these bulk boats?

752 A. That's right.

Q. And what was the capacity of the "Sonora" and the "Sultana" as automobile boats?

A. I would like to refer to my papers. That is as of the "Sultana" and the "Sonora"?

Q. Yes. As automobile boats.

A. I am quite certain it is between 300 and 325 cars, Mr. Foster.

Q. I can tell you it is around 250.

A. Is it?

Mr. ELDRED: Mr. Examiner, I am sure the Commission is very encouraging and optimistic, to say the least, to have four hearings assigned the same day.

By Mr. FOSTER:

Q. Mr. Hewitt, have you transported any automobiles on the "Resolute"?

A. I think not.

Q. Now, do you know whether under your insurance you would be permitted to transport automobiles to the head of the lakes on a barge?

A. I have been advised by our insurance department that we may do so.

Q. That you may do so?

A. Yes. That insurance coverage has been provided.

Q. But she has no means of loading cars below decks?

A. No.

753 Q. It would be just the number of cars, 35, she would carry on the top deck?

A. That's right.

Q. Now, the "Resolute" and the "Richardson" and the two Cornelius boats and the "South Park" were all vessels which you have under charter. Are they not?

A. That is correct.

Q. And the charters on none of those vessels have been renewed for 1942, have they?

A. No.

Q. So your testimony now relates to your present capacity?

A. That is correct.

Q. Rather than to your potential capacity?

A. That is correct.

Q. Yes.

Now, you testified that on the automobile business that if it was available, that you would reconvert the "South Park," the "Sultana," the "Sonora" and the "Penobscott." I mean with the present bulk commodity rates as you have enjoyed this summer you certainly would not have converted any of those boats into automobile boats to run to Duluth, at the present rates, as compared with your bulk commodities?

A. Well, I don't know, Mr. Foster. Our business has been made on one basis, the automobile business, and if we are going to survive in it we must provide facilities to take care of it.

754 That is the policy of the company itself.

Q. But it was the attractive rate on bulk commodities that caused you to convert the "South Park" and the "Penobscot" so as to have them available for that service?

A. Well, it was with the idea rather than have the equipment lie idle, and get no return on it, it was mandatory that we put them in some sort of enterprise.

Q. There wasn't any doubt in your mind but what those boats could be used in the automobile field again as soon as the '42 models came out, was there?

A. May I ask you to repeat that?

Q. I say, was there any doubt in your mind at all that both the "South Park" and the "Penobscot" could be used in the automobile transportation with the coming out of the 1942 models?

A. If I understand you correctly; no.

Q. And it was for that reason that you left the elevators in on the "South Park" so that you could make her available for the use of automobiles, continue her as available?

A. Yes.

Q. And it was for that reason you left the between-decks in on the "Penobscot"?

A. That is correct.

Q. And both of these boats were converted during the customary dull period or shutdown in the automobile factories
755 when everybody engaged in the transportation of automobiles have ships lying at the docks?

A. That is when the work was done; yes.

Q. And in considering the lost time as outlined in your Exhibit 4, that is on the basis of continuous operation of 252 days on all of those ships. Is that right?

A. The exhibit is made up on that basis; yes.

Q. Now, since you have been connected with the company, has there ever been a time when there was a considerable number of your ships tied up for a considerable time during the summer months due to a change in models?

A. There has never been a time but what we have been faced with idle ship time created by a loss of tonnage. It has never come to us in any other way.

Q. Yes. And there have been times, and there were times in both '39 and '40 where all of your ships engaged in the transportation of automobiles were operating virtually at their capacity?

A. There are peak periods in which our vessels are operating to what we call a comfortable capacity.

Q. Yes.

Now, can you tell us just what time the "Crescent City" lost last year as a result of this seasonal shut down which is a very part of the automobile industry?

A. I am unable to do that now.

756 Q. And could you do that in the case of the "Coralia"?

A. Not with what I have here.

Q. You have nothing here to tell just what time was lost on any of these ships due to the seasonal character of the automobile industry?

A. I do not have that with me.

Q. And have you anything available here to tell us just how much time any of these ships lost during the season of 1940 as a result of breakdowns or having to be pulled into the docks for miscellaneous repairs, which you practically always encounter on any ship during the full season of navigation?

A. Well, we are bound to run into some of that. We try very hard, of course, to see that these vessels are so fitted out in the spring that it will not occur during the operating sesaon.

I have no reference here to which I could definitely break it down to the number of days that they were operated.

Q. And in having Exhibit No. 4 prepared, no consideration was given to that factor at all. Is that right?

A. No.

Mr. EISEN. Mr. Hewitt, just look at the number of operating days, 190. Wasn't six weeks taken out of there?

The WITNESS. I was thinking of our operating vessels. That is true in connection with our bulk operations, and which is reflected on this very statement itself.

757 Q. And you took into consideration all lay-ups in 1940 in this exhibit?

Mr. FOSTER. Just a moment.

Mr. EISEN. Well, I don't want the record to be confused.

Mr. FOSTER. But I don't want it to be, either. That relates to the Duluth service, Mr. Eisen, the Duluth service for 190 days, as I understand it.

Mr. EISEN. No; she operated for 190 days on the lakes. She was tied up six weeks. Mr. Hewitt testified that he found that 40 percent of the time that any of these boats operated was in the Duluth service, predicated on his 1940 service. So he didn't take the 190 days he took 40 percent of the available days she was in actual operation. That gave you seventy-six days that the "Cornelius" actually operated in 1940 into the Port of Duluth; took into consideration all of the lay-ups and the time she spent in other ports and in other operations.

By Mr. FOSTER:

Q. Now, Mr. Hewitt it would be wholly impossible for you to operate all of your boats exclusively between Detroit and Buffalo, and Detroit and Cleveland, would it not?

I mean, with that carrying capacity you simply would not pull them out of the bulk trade and operate them exclusively between Detroit and Cleveland and Detroit and Buffalo with their limited carrying capacity.

758 A. No. As a matter of fact, they are in that trade to some extent now, and they are not utilized.

Q. They are not utilized?

A. No.

Mr. EISEN. You understand the Buffalo figures are not shown in the Cleveland figures.

Mr. FOSTER. No.

By Mr. FOSTER:

Q. Now, do you know when the "Coralia," "Penobscot," "Crescent City"—have you the day on which any of those vessels came out in 1940?

A. I cannot tell you the date assigned to each one of the vessels individually, Mr. Foster. I don't have—if you permit me, I can refer to my testimony. I think it is in here.

Mr. EISEN. Off the record.

(Discussion off the record.)

The WITNESS: Then I don't have the data available; no.

By Mr. FOSTER:

Q. Now, do you have that data as to when those vessels laid up last fall?

A. We naturally have that data, but I do not have it with me.

Q. Yes.

Now, the steamer "South Park" last year did operate 252 days, didn't she?

A. It did.

Q. And that was exclusively between Detroit and Cleveland, was it not?

759 A. No. She traveled between Detroit and Cleveland, Detroit and Buffalo. I am not sure whether she went up the lakes last year or not.

Q. But she opened the season and closed the season. Does that account for her long operating period?

A. I believe she did open and close it. It might have been one of several vessels, but I believe she was the one.

Q. Now do you recall when the season opened in Buffalo in 1940?

A. April 27th.

Mr. EISEN. It is shown on the exhibit Mr. Foster.

By Mr. FOSTER:

Q. And do you remember the last sailing to Buffalo in 1940?

A. I don't.

Q. You don't remember the last sailing?

A. No. Generally speaking, we try to continue as last as, oh, the 10th or 12th of December.

Mr. ELDRED. Mr. Examiner, I don't want to preclude any examination, but I don't see that it makes any difference in this application whether the season opened on the 15th of May or the 10th of April, or when it closed. I don't see that that is the issue here.

Mr. EISEN. We have shown all that on the exhibit.

Mr. FOSTER. Have you read the exhibit, Mr. Eldred?

Mr. ELDRED. I have read it, but I don't see that it makes
760 any difference.

Mr. EISEN. Obviously, all of these boats didn't start operating when the lake opened, and that is the whole purpose of the exhibits, but the opening of the lake is shown on the bottom of the exhibit, and I don't see why it is not clear.

Mr. FOSTER. But the automobiles you could handle is based on the running season between Detroit and Cleveland.

Mr. EISEN. The witness explained all that, Mr. Examiner. He said if you figure 252 days, even though some ports were not open, he figures 252 days a reasonable time for all of the ports. I don't see what more can be gotten from the witness on that.

Mr. FOSTER. I am trying to find out why he thinks that.

Mr. EISEN. You can argue that on brief, but don't argue with the witness here.

By Mr. FOSTER:

Q. Well, obviously, Mr. Hewitt, you couldn't have operated to either Buffalo or Duluth last year 252 days. Isn't that correct?

Mr. EISEN. I object, Mr. Examiner, on the grounds of the objection I have just made.

Mr. FOSTER. Let the witness answer.

Mr. EISEN. I object to the question. It has all been answered in the record.

Mr. FOSTER. Do you want to stipulate that?

Mr. EISEN. Sure I will stipulate it is all in there. My
761 only objection is that it is repetition.

Mr. FOSTER. Would you read the question, Mr. Reporter?

(Question read.)

Mr. EISEN. I submit, Mr. Examiner, the witness testified he took 252 days, which was computed as the basis of the navigation to any one port. We concede that the 252 is not the exact figure for any one port, but that is the average. The tied-up boats could have been thrown into the Cleveland operation as the opening date, as the witness testified, and used to clean up the backload and then gone into the other ports in full.

Now, that is the witness' testimony.

Now, if Mr. Foster does not agree with his conclusions, Mr. Foster can argue it on brief. Why ask him over and over again? He has already answered it.

Exam. GRAY. I think it need not be repeated any further.

Mr. FOSTER. I have not asked that question of this witness previously. Mr. Eisen has tried to answer that question in his own way every time that I asked it, but this witness has not been asked that question before. And it goes to the admissibility of these exhibits which have been marked but not offered.

Mr. EISEN. Would it be proper to ask the Reporter to refer back to how he got his 252 figure?

Mr. ELDRED. I think it has all been stated clearly.

762 Mr. FOSTER. Have the Reporter go back and find it. I don't recall asking that question before.

Do you have any objection to the witness answering it now?

Mr. EISEN. Will you explain how your got the 252 days once again, Mr. Hewitt?

The WITNESS. 252 days, Mr. Foster, is the actual number of days in which the "South Park" operated during the season of 1940, and, while the other vessels as shown here did not operate that number of days, we considered that it was a potentiality under which they could have operated.

By Mr. FOSTER:

Q. Which would have meant that your whole fleet would have had to operate to Cleveland. Is that right? That being the only port to which they could then operate.

A. In order to get the 252 days, yes; in order to clean up that accumulation and make them available for other ports.

Q. Yes. And have you the dock facilities at either Cleveland or Detroit to handle that full capacity sailing?

A. Oh, I think we have; yes.

Q. You think you could handle it in and out of your Cleveland and Detroit docks, the full capacity of all of your vessels?

A. I do.

Q. But you have never had anywhere approaching that number of automobiles; is that right?

A. Oh, yes, in the spring of the year, year, we have accumulated them in excess of that capacity.

763 Mr. EISEN. You mean before the lakes opened?

The WITNESS. Yes.

By Mr. FOSTER:

Q. But is that for shipment to Cleveland?

A. To Cleveland and Buffalo.

Q. Cleveland and Buffalo. There never was in your experience, even by all the carriers, that number of automobiles being shipped to Cleveland for 3 weeks solid?

A. It has never been solicited that way.

Q. That is more than the total shipments to Cleveland during the whole season, is it not?

A. I don't follow you.

Q. You say that your capacity is over 2,000 cars a day operating all these fleets, and, if that were so, you could take either 1938 or 1939, and if you operated them that length of time it would take

are of all the cars that were shipped to Cleveland during the whole season, would it not?

A. No.

Q. That is, together with the capacity of the B. & C., which you also given?

A. It was in the year 1938 when there were no automobiles manufactured, possibly, but certainly not in 1940, and certainly not in 1941.

Mr. EISEN. Isn't that the whole basis of your protest? That you never got that tonnage?

The WITNESS. Yes.

Mr. EISEN. If you had it you wouldn't be in here complaining, or protesting.

By Mr. FOSTER:

Q. The Nicholson Transit Company were not operating to Duluth in 1938, were they?

A. Yes.

Mr. EISEN. Wait a minute. Nicholson Transit. I am going to object to testimony in the record on that. The Nicholson Transit witness covered that.

Mr. FOSTER. Automobiles. We are going to show the whole scope of our operation, Mr. Eisen.

Mr. EISEN. Wait a minute. It was agreed that this portion of the hearing was automobiles.

Mr. FOSTER. That is right. That is true.

By Mr. FOSTER:

Q. But in 1938 during the whole season you carried only 2,335 automobiles to Duluth. Is that right?

A. Not according to my figures, Mr. Foster.

Mr. EISEN. 1938?

By Mr. FOSTER:

Q. 1938, Mr. Hewit.

A. 3,923.

Mr. SULLIVAN. What number are you looking at? What exhibit?

Mr. EISEN. Exhibit 1 shows the total for 1938. Exhibit 9 shows the totals up to August 1st. That is what is confusing you, Mr. Foster.

The WITNESS. For the year 1938.

Mr. FOSTER. That's right.

By Mr. FOSTER:

Q. How many cars did you handle to Duluth?

A. 3,923 for the whole season.

Mr. EISEN. I object to his reading what is in the exhibit.

Mr. FOSTER. He protests that his business is dropping off because of competition from this company. I want to show for the whole season he carried less, up to first of October.

Mr. EISEN. Well, I object to your reading the exhibits. Go ahead.

By Mr. FOSTER:

Q. That is true, is it?

A. That we handled 3,900 cars to Duluth in 1938?

Q. Through the whole season.

A. Yes.

Q. And in 1939 4,088?

A. A little over 4,000.

Q. And in 1940 8,910?

A. That is correct.

Q. You have no assurance whatever that if the Nicholson Transit Company had not commenced operating to Duluth, that you would have gotten any of this business which they got; have you?

Mr. EISEN. I object; it is irrelevant. This isn't a trial of Nicholson Universal; it is a trial of Nicholson Transit.

766 Mr. FOSTER. It isn't a trial of anybody, Mr. Eisen. At least I didn't know it was.

Mr. EISEN. It is a formal proceeding.

Exam. GRAY. The witness may answer.

The WITNESS. Will you repeat the question, Mr. Foster?

Mr. FOSTER. Will you read the question?

(Question read.)

A. I think it stands to reason, Mr. Foster, that if you continue to add other carriers into any port, that you are going to have a loss of business.

By Mr. FOSTER:

Q. Well, the number of automobiles which Nicholson Transit Company have carried to Duluth in 1941 so far is only about half of what the Western Transit carried in 1940. Isn't that so?

A. I don't have the Western Transit figures here to check.

Q. Do you have the Western Transit figures here any place?

Mr. EISEN. A Western Transit employee will be on the stand as a subsequent witness.

Mr. FOSTER. I don't know all of those things.

By Mr. FOSTER:

Q. You don't know how many cars they carried during 1940. Is that right, Mr. Hewitt?

A. No; I don't.

Q. But Nicholson Transit has been added as a carrier, and Western Transit has discontinued. That is the actual situation, isn't it?

767 A. I don't think it is the actual situation. Western transit is still alive.

Q. But are not transporting any automobiles?

A. Well, there isn't any difference in their picture today than there was a year ago.

Q. There isn't any difference?

A. No.

Mr. EISEN. You ought to go into that, I think, with the Western Transit man. He will show they are in existence today in the same way they have always been. If you will just wait for the Western Transit man he will go into that.

Exam. GRAY. I think it is advisable, Mr. Foster.

Mr. SULLIVAN. No. 2 is a composite exhibit including Western Transit.

Mr. EISEN. Yes. But he asked for Western Transit figures alone.

By Mr. FOSTER:

Q. Mr. Hewitt, you spoke of the "King" and "Jack" of the MAT line in your testimony. Isn't it a fact that neither of those boats are any longer in the Duluth run?

A. I have not been so advised by the MAT Line.

Q. You have not been so advised?

A. No.

Q. You don't know whether they are still in operation yet on that run?

A. I have been so advised by them that they are.

768 Q. That they are still in operation?

A. Yes.

Mr. EISEN. Under what date?

The WITNESS. September 2d.

Mr. EISEN. 1941?

The WITNESS. Yes.

By Mr. FOSTER:

Q. Now, your Exhibit No. 4 is prepared on the theory that you have a season of 252 days and that with continuous operations including Sundays and with the automobiles, even though the factories are on five-day production, delivered in such a manner so as to permit each and every one of those vessels to be operated without any possible delay from any cause whatever. Is that right?

Mr. ELDRED. Now, Mr. Examiner, I don't mind this, but it seems to me we are wasting an awful lot of time. The witness stated

clearly what he stated of the 252 days. That certainly is clear, I think, to everybody. I don't know why we have to go back into that again.

Mr. FOSTER. I asked the witness whether he made any allowances——

Mr. EISEN. Why don't you ask him if he dispatches boats on Sundays.

Do you?

The WITNESS. Certainly.

Mr. EISEN. That is the answer.

769 Mr. FOSTER. That is not the answer.

Mr. ELDRED. Well, let us get the 252 days out of the picture and go through with the thing.

By Mr. FOSTER:

Q. Mr. Hewitt, how often do you have to clean boilers on the various ships during the season of navigation?

A. Oh, I think an operating man could answer that question. I am not certain. I have no knowledge.

Q. You mean that you have allowed no deduction for time taken out for cleaning boilers on these ships. Is that right?

Mr. EISEN. Well, I object to that until you develop first whether any time is taken out.

Mr. FOSTER. I am asking if he made any allowances.

Mr. EISEN. I object until you determine whether there is any such thing as taking off time.

Don't ask the question until you establish that basis.

Mr. FOSTER. They are offering an exhibit here, Mr. Examiner, and I am simply trying to find out how they base what they mean by this exhibit.

Mr. EISEN. Mr. Examiner, my objection is a very fundamental precept of law. If there isn't any time taken off to clean boilers, and the witness says no, it immediately creates the impression that time is taken off.

Why don't they determine that first, whether there is any time taken off? You have to establish a basis before you ask a question.

770 Exam. GRAY. Let us find out whether the witness has considered that in preparing the exhibit.

By Mr. FOSTER:

Q. Mr. Hewitt, you do know that your vessels are delayed during the operating season for the cleaning of boilers, do you not?

A. Yes.

Q. But you cannot tell us, because that is in charge of the operating end of the fleet, how much time is lost each season for that purpose. Is that right?

A. That is correct.

Q. But in preparing this exhibit here you have not taken into consideration the loss of any time for that purpose. Is that right?

A. We have arrived at the 252-day figure, which might well be 260 some years, it might be 240, but during the year 1940, on which this exhibit was made up, it actually was 252 days on which the "South Park" operated.

I cannot tell you whether she had her boilers blown or not. If so, she had it done in that period of time.

Mr. EISEN. Mr. Examiner, in order to save time, I am willing to stipulate that, regardless of whether or not due allowance has been made, the exhibit can be cut down 10 percent. In other words, we are willing to take off 10 percent of the days. In other words, tie up the vessels 46 days. I am quite sure Mr. Foster will agree that cleaning boilers does not tie up 10 percent.

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If that will satisfy Mr. Foster, I think I am more than generous. It still has not been developed that these things have not been eliminated, but I am still willing to stipulate 46 days, 8,000-some automobiles taken off the total to Buffalo; 17,000 off the 174,000 total to Cleveland, and 3,000 automobiles taken off the total to Duluth; and let the picture show the results.

Mr. FOSTER. Mr. Eisen is very generous, but apparently the first trip that was made to Buffalo was April 27th, which would take off 23 days at the beginning of the season, and maybe more at the end of the season.

Mr. EISEN. No. The witness testified the season was opened April 4th. He testified there wasn't sufficient tonnage. He testified that both Cleveland and Buffalo tonnage is routed through Cleveland prior to the opening of Buffalo.

Exam. GRAY. Well, I am not very much in favor of your generous offer, Mr. Eisen. The figures have apparently been prepared from figures of record, and if they have been I don't want them changed by an arbitrary giving up of 10 percent, and the examination, I believe, is in order to find out whether those facts have been considered in arriving at the days.

Mr. EISEN. I think the witness has testified that he has taken into consideration lay-up time. He testified specifically in relation to the vessel "Cornelius," six weeks.

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Exam. GRAY. And at this time I am in favor of adjourning until tomorrow.

Mr. SULLIVAN. I second it.

Mr. EISEN. Mr. Examiner, I am strenuously opposing that because for the last hour or so Mr. Foster has been reiterating and reiterating his questions. I think he has about concluded his

cross-examination. I think it is very unfair to have to bring Mr. Hewitt back tomorrow for a very limited cross-examination.

Mr. FOSTER. I can say this, Mr. Examiner, Mr. Hewitt has said there are various other witnesses who are coming on to testify who can testify as to these various matters.

Mr. EISEN. As to rates.

Mr. FOSTER. How about the other matters?

Mr. EISEN. I don't have an operating man here, but there will be a Western Transit man, there will be a rate man, and there will be a financial man.

Mr. FOSTER. Will there be anyone here with available records as to the first arrival at Buffalo, the first arrival at Duluth, and the last arrival at Buffalo and Duluth?

Mr. EISEN. You have in these exhibits, if you will analyze them, the complete details as to the first departures at all ports, and as to the last arrivals at all ports.

Mr. FOSTER. I am talking about 1940.

Mr. EISEN. Yes, sir. It is even in more detail in 1940
773 in this exhibit. Wait until I get the number of it.

No. 8. No. 8 gives the date that each automobile was dispatched right through to the last date of the season. If you look at sheet 3 you will find that the last automobile dispatched to Buffalo was November 29th; that the last boat dispatched to Cleveland was on the 30th, and so forth. And I think you have the knowledge of the time in transit, you can add that to it and determine when they arrived at the ports. We have given you everything you have asked for right in the exhibits if you will only analyze them.

Now, what other data do you want, Mr. Foster?

Mr. FOSTER. If you are satisfied that you can get that exhibit in, I don't care for any further data?

Mr. EISEN. I am satisfied I can get the exhibit in.

Mr. FOSTER. All right.

Mr. EISEN. Are you finished with your cross?

Mr. FOSTER. No; I am not finished. He said he wants to adjourn.

Mr. EISEN. You have further questions?

Mr. FOSTER. Yes; we have further questions.

Mr. EISEN. Well, go ahead.

I object to the adjournment, Mr. Examiner.

Mr. SULLIVAN. Is Mr. Hewitt going to be in town tomorrow?

Mr. EISEN. Well, Mr. Foster has been on a fishing expedition for half an hour.

774 Mr. SULLIVAN. Well, on behalf of the Reporter I ask that we adjourn.

Mr. FOSTER. I second the motion.

Exam. GRAY. We will adjourn until 10 o'clock tomorrow morning.

(Whereupon, at 5:35 o'clock p. m., September 9, 1941, the hearing was adjourned.)

775 PROCEEDINGS

Exam. GRAY. Mr. Foster, are you ready to resume cross-examination?

Mr. FOSTER. Yes.

F. L. HEWITT, Jr., resumed the stand and testified further as folows;

Cross-examination (continued) by Mr. FOSTER.

Q. Mr. Hewitt, on your Exhibit 1 you show that in April of 1940 you moved only 837 cars to Buffalo while you moved 10,000 to Cleveland, 1,628 to Duluth, 393 to Green Bay, and 1,311 to Milwaukee.

In 1940 Buffalo did not open up until quite late in April?

A. As I recall; yes.

Q. Yes. Now, on this Exhibit 1 it is pretty clear that you have about four months out of each season where you have a heavy movement.

A. True.

Q. And that it tapers off. Now, in August, 1940, you moved no cars to Green Bay, only 127 to Duluth, 271 to Milwaukee, 912 to Cleveland, and 308 to Buffalo. Now any one of your ships could have handled all of those cars, could it not?

A. You are discussing 1940?

Q. Yes.

776 A. Handle it over what period.

Q. The cars you moved in August, to all ports, could easily have been handled by one boat, could it not?

Mr. ELDRED. In what period?

Mr. FOSTER. During August of 1940.

The WITNESS. I don't think that they could have handled them all during the period; no. I am considering the different ports involved, and distances between them.

By Mr. FOSTER:

Q. You would have had about one ship to Buffalo?

A. Yes.

Q. And with your big "Woodruff" you would have had about two trips to Cleveland?

A. Yes.

Q. And you did operate your boats on a Milwaukee-Duluth run where they go to Milwaukee and into Duluth?

A. Well, as I said yesterday, it is an elastic service, there are no schedules to which it is possible to work it out that way.

Q. You recently sent a boat on that particular voyage to Milwaukee and Duluth?

A. It has been done.

Q. And it takes you about 24 hours to make the turn-around to Cleveland?

A. Approximately.

777 Q. And about 48 hours to Buffalo?

A. Approximately.

Q. That is about three days. And how long does it take you to make this run to Milwaukee and Duluth and return?

A. I haven't checked the logs, and I wouldn't want to say as to the definite time.

Q. It wouldn't take over 10 days?

A. No.

Q. So one of your boats could have taken care of all the business you had in August 1940, in less than half a month on the normal schedule of one of these ships?

A. Possibly.

Q. In August of 1940 with the Nicholson Transit Company not in the picture at all, all of your vessels, because of the inherent nature of the automobile industry, would have been lying at the dock at any event. Is that not so?

A. It is one of the manifest difficulties under which we are operating; that is, the lack of tonnage, and that is a fact.

Mr. EISEN. That is all of your vessels.

Mr. FOSTER. With the exception of this one.

Mr. EISEN. Under this conjecture, you mean?

Mr. FOSTER. No; I mean under the actual figures shown on the exhibit.

By Mr. EISEN:

Q. Do you understand the question? You say all of your
778 vessels except one were tied up in the month of August. He is talking about actualities now.

A. I didn't say that was actually the case, Mr. Foster. It might be possible to work it out that way. There are so many factors involved it is a little difficult to say.

Exam. GRAY. Well, do you know whether or not all of your vessels except one were tied up and idle during the month of August?

The WITNESS. I do not know that for a fact, Mr. Examiner. It is quite possible. There might have been one additional boat in service during the month of August.

I am referring to automobile boats. We have five or six of our vessels that were in service available during the month of August.

By Mr. FOSTER:

Q. Last year you did move to Duluth a considerable number of cars on outside bulkers which you did not have under charter, or which you did not own. Isn't that right?

A. I am confused as to what you consider a considerable number, Mr. Foster.

Q. Put it this way: Do you know how many outside vessels you shipped cars to Duluth on in 1940?

A. That is, the vessels not owned or chartered by Nicholson?

Q. Yes, sir.

A. I could guess at it.

Q. Give us your best recollection of it.

779 A. I would say 500, 600, or 700 cars.

Q. That you shipped on outside boats?

A. Over the season?

Q. Yes.

A. Yes.

Q. And you haven't shipped any in that manner this year?

A. No.

Q. Now, turning to your Exhibit 4, the 252 days which you have for the "South Park" covers from April 4 to December 12, does it not?

A. Yes.

Q. Going back to Exhibit 1, there were no cars at all moved to either Duluth, Green Bay, or Milwaukee from the first to the twelfth of December 1940; is that right?

A. That is correct.

Q. Now, Mr. Hewitt, do you attribute the decrease in your percentage of gain on the Duluth run to the Nicholson Transit operation?

A. I do.

Q. Now, in 1940 up until August 1st where you had moved to Green Bay and Milwaukee a total of 4,908 cars, this year you have moved to Milwaukee only 3,571 cars. There you have had an actual decrease of approximately 25 percent.

Mr. EISEN. How do you mean, decrease in Milwaukee?

Mr. FOSTER. No; Green Bay and Milwaukee combined.

780 The WITNESS. That's right.

Mr. EISEN. That is presuming that all the Green Bay cars now go through Milwaukee?

Mr. FOSTER. No; it isn't assuming anything. Now, you let me——

Mr. EISEN. I object to the form of the question. The exhibit shows an increase in Milwaukee——

Exam. GRAY. Off the record.

(Discussion off the record.)

Mr. FOSTER. Just strike the question, Mr. Reporter.

By Mr. FOSTER:

Q. Did you testify yesterday, Mr. Hewitt, that you were serving Green Bay now through Milwaukee?

A. Yes.

Q. Now, turning to Exhibit 9, up until August 1, 1940, how many cars did you ship to Green Bay?

A. May I have the question reread?

(Question read.)

A. 1,294.

Q. And how many to Milwaukee?

A. 3,614.

Q. Or a total of 4,908. Is that right?

A. Yes.

Q. Now, what has been your total shipments to Milwaukee in that same period during 1941?

A. 3,571.

781 Q. Or a decrease of approximately 25 percent?

A. Approximately.

Q. Now, you do not have the competition of the Nicholson Transit Company on that run; do you?

A. I am not certain of that. I think possibly in many ways we have.

Mr. EISEN. Well, explain your answer.

By Mr. FOSTER:

Q. They don't operate to either one of those ports, do they?

A. No. Nevertheless, I think they are a competitive factor in that many of these dealers in the territory tributary to the ports possibly have taken some of those cars through the Port of Duluth rather than through Green Bay or Milwaukee.

Q. You have no knowledge of that?

A. Only as I have been able to develop from solicitation reports as may come in, things of that sort, in our traffic department.

Q. Now, did the steamer "Woodruff" lose any time in the month of May this year, as a result of lack of business?

A. I don't think I can answer that question with the records I have available in front of me.

Q. Have you made a study, or have you had a study made as to whether or not the "Crescent City," "Coralia," "Penobscot," "Sonora," "Woodruff," or "South Park" lost any time during May of 1941 as a result of lack of business?

782 A. I have not only as to time lost over the entire season.

Q. And that was the season of 1941?

A. That was the season of 1940.

Q. 1940. So you have had actually no study made or have made no study yourself as to the operation of your ships during May and June and July, the heavy peak movement of automobiles, during the season of 1941?

A. I have not broken it down into any weekly or bi-monthly or monthly periods.

Mr. EISEN. Did you testify as to what tie-ups you had in July in certain ports in 1941? I thought I heard you testify as to that.

The WITNESS. It is quite possible. There were tie-ups as I recall all summer of these automobile vessels, but I don't recall at the moment just which ones they were.

By Mr. FOSTER:

Q. That was in July 1941?

A. May I have the copy of my testimony, Mr. Reporter?

Mr. EISEN. That was where you were testifying, I think, as to the bulkers that were available. I will tell you what exhibit it was. In connection with your Exhibit 10, your last exhibit.

Off the record.

(Discussion off the record.)

The WITNESS. I find that at least one of the automobile vessels, namely, the "Sonoma," was tied up because of lack of

783 tonnage in the middle of July.

By Mr. FOSTER:

Q. In the middle of July?

A. Yes.

Q. And did she run continuously from the time she went out until that time?

A. That is, from the time she was placed in operation?

Q. In the spring.

A. I believe so.

Q. And all of your automobile boats from the time they came out in the spring ran continuously until the cars started dropping off due to the seasonal change. Is that right?

A. Pretty generally; yes.

Q. Now, in connection with your Exhibit 10, which covers your Duluth service, it starts out on April 1st and runs down to August 2nd, showing the daily "on hand" automobiles. In preparing that exhibit did you have the date as to how long the 610 cars had been on hand on April 23 when there was a shipment of 400 cars?

A. No. This on-hand report is a report which we have of shipments on hand as of 7 a. m. each day, and there is no breakdown

therein as to whether they have been on hand 12 hours or 2 days or anything of that sort.

Mr. EISEN. Can't you give that from your exhibit, Mr. Hewitt? Does your exhibit show on the 22d you had 18 cars?

The WITNESS. It would indicate on there that we had no
784 shipments other than the 21st or 22nd of the month, or for four or five days, at the most.

By Mr. FOSTER:

Q. It doesn't show that you shipped the cars as they came in, this exhibit doesn't, does it?

A. That is pretty much the general practice, Mr. Foster.

Q. Well, you didn't have any investigation made or didn't make any investigation yourself to determine whether that was done on this Duluth movement, did you, Mr. Hewitt?

A. There has never been any such investigation made, Mr. Foster. It is the practice to ship all of the older cars first.

Q. What boats did you operate to Duluth, what automobiles did you operate to Duluth at the commencement of the season up until the——

A. I don't recall definitely. As I say, our service is elastic and we are apt to discard any one of them, depending on the conditions that exist at the time.

Q. You don't recall what boats you operated?

A. No, I don't.

Q. Now, in taking care of your Cleveland business, including the Ford Motor Company account, is it necessary that you operate two boats to Cleveland during the peak movement?

A. Well, that again, Mr. Foster, is dependent a great deal on the local conditions as they exist at the moment, and the volume involved as to whether a large boat can carry it or
785 whether it requires two small boats. It very often works out both ways.

Q. Well, up to August 1st you moved 35,000 cars to Cleveland?

A. In 1940?

Q. In 1941.

Mr. EISEN. What exhibit is that?

Mr. FOSTER. Exhibit 9.

A. Yes.

Q. Do you recall, Mr. Hewitt, just what boats you did operate? You operated the "South Park."

A. I believe the "South Park," the "Woodruff," "Crescent City," "Coralia."

Q. And you moved 50,000 cars to Buffalo during the same period?

A. Yes.

Q. Now, you did operate almost continuously on Lake Erie four of your automobile boats, did you not?

A. I think that is true.

Q. Now, did there come a time during the present season of navigation, Mr. Hewitt, where all of your automobile boats were out of the automobile service due to lack of business?

A. No.

Q. Did there come a time——

A. To the best of my knowledge; no. We have always maintained a service, thinking it was necessary, rather mandatory upon us, as common carriers.

786 Q. Did there come a time during this present summer, despite the heavy movement of automobiles, where you were only operating one automobile boat on Lake Erie?

A. It might have been quite possible that the tonnage available did not warrant any more than that, and that is something that we didn't do—I am not certain at the moment—it is quite possible.

Q. Yes. By the very nature of the production of automobiles with this shutdown of the factories where they absolutely cease making automobiles during the summer months for their change-over, it would never be possible to keep all of your automobile boats operating 252 days, would it, Mr. Hewitt?

A. I think it is quite possible, Mr. Foster. We are headed into the most uncertain times. If my recollection is correct, many years ago the manufacturers changed over in the middle of the production periods during different periods of the year, which meant that we had a fairly consistent season throughout. They may possibly go back to that when this emergency is over. I can visualize the possibility of operating pretty generally over an entire operating season. It is possible to develop itself that way.

Q. Your Exhibits 5, 6, and 7, which are the graphs showing the peaks and valleys of the movement to Duluth, Cleveland, and Buffalo, during 1939 and '40, show that about half of the time during the season of navigation from April to November that at

787 least half of your tonnage is not being used and there is nothing for it to do; do they not?

A. That is correct, on the present manner of handling this tonnage, or in the manner in which it is offered, as the graphs portray the actual picture, according to facts.

Q. Yes. Now, as far as you know none of your automobile boats lost any time whatever due to lack of business from the time they were fitted out this spring until about July 15th when one of your boats went to the dock, due to lack of business; is that right?

Mr. ELDRED. You mean boats used exclusively for that purpose, not the combination boats?

Mr. FOSTER. That's right.

Mr. EISEN. What do you mean by that, that they were operating every day back and forth?

Mr. FOSTER. That's right.

A. I am not certain that they have lost no time, Mr. Foster. I don't feel that I could testify that they were operating every day, or that they have not lost any time. Generally speaking, they were fairly well occupied.

By Mr. FOSTER:

Q. Fairly well occupied?

A. Yes.

Q. They might have laid over from Saturday night until Monday on account of the five-day production, but you
788 didn't lay them up because you knew they would be going out Monday night. Is that right?

A. That is true.

Q. Now, when do you expect that your automobile boats will be back in operation?

A. Under the normal routine?

Q. Yes, with the new models coming out.

Mr. EISEN. Aren't they in operation? What do you mean by operation?

Mr. FOSTER. I mean in service.

Mr. EISEN. Well, they are available, are they not?

The WITNESS. They are available and they are in service, to the extent that they are needed at the present time.

By Mr. FOSTER:

Q. I mean, if they are lying at the docks now for lack of business it is because the new 1942 models are not in production. Is that not so?

A. Well, looking at it strictly from a shipping point of view, it is because the tonnage has not been offered to us.

Q. Yes. And you fully anticipate that when all of the companies get in production on their 1942 models that that tonnage will be offered and all of your boats will get back in service?

A. We are certainly hopeful.

Q. How many are in service now, Mr. Hewitt?

A. Having been away a week, I don't know.

789 Q. Do you know how many were in service when you left?

A. I believe two, as I recall. I am not certain of that. You are speaking strictly of automobile boats?

Q. Yes. And did you make any investigation before you left as to how soon others would be in service; that is, the conditions with the factories?

A. We have attempted to. We get many promises. Quite generally they are not fulfilled, but I should say within the immediate future, why, the new models should come along.

Q. And you know that during the month of August nobody moved any automobiles to Duluth, to speak of, don't you, 1941?

Mr. EISEN. Have you any figures on the other lines? That is the question.

The WITNESS. The month of August?

By Mr. FOSTER:

Q. Yes.

A. 1941?

Q. Yes.

A. No, I don't have.

Q. Do you know how many cars you moved to Duluth during August of 1941?

A. I haven't that tabulated.

Q. You haven't that tabulated?

A. No. To the best of my recollection, we dispatched, oh, several vessels, but I don't recall the amounts involved.

Q. Were those bulkers or regular automobile boats?

790 A. I believe both.

Q. You believe both during August?

A. Yes.

Q. And did you send the "Penobscot" that left on this Milwaukee-Duluth run—was the first boat you sent up in September?

A. Latter part of August or first part of September, if I recall, the "Penobscot" started.

Q. You do know, Mr. Hewitt, that the lack of business during the month of August, and during the early part of September was due primarily to the change in models of the automobiles rather than that some other carriers were getting them from you, do you not?

A. Well, our graphs certainly indicate that this business is full of peaks and valleys, and that is one of the valley periods.

Q. Turning now to your Exhibit 10, can you go down through that exhibit, Mr. Hewitt, and tell us how many voyages you make to Duluth with regular automobile carriers?

A. I would say without checking on the records that there were from this exhibit 16 trips.

Q. And you can tell that there were 16 trips by the number of cars carried?

A. That is what I am basing it on.

Q. Knowing that you cannot carry the number of cars

791 on the deck of a bulker?

A. That is correct.

Q. In other words, for the four months you made approximately a trip a week?

Mr. EISEN. With an automobile carrier.

Mr. FOSTER. With an automobile carrier.

A. Yes.

By Mr. FOSTER:

Q. Now, can you tell from this exhibit what boats you dispatched?

A. You mean the name of the vessels?

Q. Yes.

A. No.

Mr. EISEN. Mr. Examiner, I would like to have a ruling whether we have to go into all the details such as the number of boats dispatched, the names of the boats.

Obviously we have the facilities. We haven't contended that Nicholson Transit or Great Lakes or MAT or any other line has taken any tonnage away from us.

Our picture is that we have here available facilities. Now, they are all depicted here. I don't care who carried it, or what, or where. He has the facilities. And what difference does it make what boat went? A boat went. That is all that counts. And there were boats there idle.

We will be here all day if we go into these irrelevant matters.

792 Exam. GRAY. Well, I doubt if it is absolutely necessary that you get the names of the vessels, is it, Mr. Foster?

Mr. FOSTER. Well, I think it is important. He has testified that all of his automobile boats operated continuously from the time they were fitted out until they started laying them up due to lack of automobiles as a result of the changeover.

It may be very well, as Mr. Eisen says, that they can offer all of these exhibits and just testify that they have this capacity and can handle this business, but I think it is very important for us to show whether Mr. Eisen thinks so or not, that their facilities were taxed.

Mr. EISEN. Well, Mr. Examiner, it still has not been developed that although all of these boats ran, that they carried one automobile or 400 automobiles. Mr. Hewitt hasn't testified that these boats were loaded to capacity. Mr. Foster diligently kept away from that question.

Mr. FOSTER. That is precisely what I am leading up to now, to ascertain whether there was any capacity remaining.

Mr. EISEN. Well, ask him the question. He told you time and time again that he didn't have his 1941 cars or 1941 records here with him.

Now, he has told you that time and time again. Now, if you asked those questions and he has told you he doesn't have it, there isn't any sense in asking him three or four different
793 ways and getting the same answer each time. If he doesn't know in response to your direct inquiry he doesn't know in response to your roundabout inquiry.

Mr. FOSTER. Mr. Examiner, I haven't the slightest idea whether that was an objection addressed to you or an oration, or what it was.

Mr. EISEN. No, I made an objection to you, Mr. Examner, and you asked him a question concerning it.

Exam. GRAY. Now, Mr. Foster, I don't want to preclude you from producing and showing anything that you regard as essential to your case.

Go ahead.

By Mr. FOSTER:

Q. You have no knowledge, then, Mr. Hewitt, nor have made no investigation in connection with your Exhibit 10 so as to be able to tell us at this time which of your automobile carriers made these various trips to Duluth in the commencement of the season until August 1st. Is that right?

A. That information could be secured, but I have nothing available at the moment; no data with me to be able to answer that question, Mr. Foster.

Q. Well, in connection with your Exhibit 10 and the figures which you have set out on that, you wouldn't be in a position to tell us whether there was any available space on any of these automobile boats which you dispatched to Duluth, not knowing which of your boats were dispatched. Is that so?

794 A. I wouldn't want to testify along those lines; that is true.

Q. I mean, you have no knowledge of it?

A. No.

Q. And not knowing which boats were dispatched as far as you can tell at this time, each of those boats might have been loaded to its complete capacity?

Mr. EISEN. Mr. Hewitt, can't you accommodate Mr. Foster by telling him how much each of your boats could have carried and the quantity shown?

The WITNESS. Well, answering Mr. Foster's direct question, these amounts here would indicate that at least some of these vessels departed without capacity loads, but again I cannot tell you to what extent they were short, not knowing or having available here the names of those vessels that the cars were actually carried on.

Mr. EISEN. Let me——

Mr. FOSTER. I am cross-examining the witness.

Mr. EISEN. I am just trying to help you out.

Mr. FOSTER. I think I will get along fine without your assistance, I actually do.

Mr. EISEN. Go ahead.

(By Mr. FOSTER):

Q. There is a further factor, isn't there, Mr. Hewitt, that the "South Park" on certain sized automobiles could not transport more than 205?

A. That is correct. And by the same token, most any of
795 the automobile vessels could carry in excess of 240.

Q. Of the larger boats?

A. Yes.

Mr. FOSTER. I think that is all.

Redirect examination by Mr. EISEN:

Q. Now, will you answer Mr. Foster's question, Mr. Hewitt?

Mr. FOSTER. Did I ask some question that was not answered? I thought he answered.

Mr. EISEN. You were satisfied with it but I am going to give you the rest of it. I am going to have him answer it in redirect.

By Mr. EISEN:

Q. Will you refer to your Exhibit No. 10 and tell us which of your boats could have carried 427 automobiles in one load? That is the boat that was dispatched on April 19th.

A. The "Woodruff" or the "Sonoma" could have carried 427 automobiles.

Q. What was the carrying capacity of those vessels?

A. 450

Q. So that when those vessels went out they were 23 automobiles short?

Mr. FOSTER. Just a moment. He has testified he couldn't testify to that.

Mr. EISEN. All right. I developed, Mr. Foster, there
796 were only two boats that could carry that quantity. You asked the question and now I am having it answered for you. He said there were only two boats that could have carried 427 automobiles.

By Mr. EISEN:

Q. And those two boats were the——

A. "Woodruff" and "Sonoma."

Q. And the capacity of those vessels is 450 automobiles; is it?

A. That is correct.

Q. And then those boats must have gone out with 23 automobiles short.

Now, look for your automobiles dispatched on April 27th.

Mr. FOSTER. Are you testifying or asking a question?

Mr. EISEN. Is that an objection?

Mr. FOSTER. I object to you orating to the witness and then leading up to the question.

Mr. EISEN. That is all you have been doing all along, asking leading questions. We want the facts in the record.

Mr. FOSTER. Mr. Eisen, you always ask leading questions on cross-examination.

Mr. EISEN. Are you overruling my ability to fulfill the gaps in Mr. Foster's cross-examination, or may I continue?

Exam. GRAY. You are entitled to redirect examination.

Mr. FOSTER. I object to the form and the fact that it is a leading question.

797 By Mr. EISEN:

Q. Will you refer to your dispatch of April 27th and tell us which of your automobile boats could have carried 400 automobiles?

A. Again the "Woodruff" or the "Sonoma."

Q. The "Woodruff" or the "Sonoma;" now, what was the carrying capacity of those vessels?

A. 450.

Q. Now, Mr. Hewitt, do you know these facts concerning which you are testifying of your own knowledge, or am I leading you into answering them?

A. I have answered the questions from my own knowledge.

Q. So that those boats actually left with 50 automobiles less than their capacity for either one that was used on that sailing?

A. For either one that was used on that sailing; that is correct.

Q. And have you any other vessel besides those two that could have accommodated 400 automobiles in one sailing?

A. No.

Q. So that if one sailing took care of that 400 automobiles it must have been either one of the two boats that you mentioned? Sailing of April 27th, 400 automobiles.

A. I would say so; yes.

Q. Now, refer to your sailing on May 3, 359 automobiles. Which of your boats could have accommodated 359 automobiles?

798 A. Well, as I recall, the "Woodruff," the "Sonoma," the "Coralia," and the "Crescent City."

Q. Now, would the 359 be the full capacity of each one of those boats?

A. No.

Q. How about the sailing of May 11th, 358 automobiles?

A. The same thing would apply.

Q. Will you refer then to this 16 automobile vessels that you estimated had been dispatched, and tell us which one of those quantities would indicate to you that the full capacity of the vessel was used, if any.

A. I don't think I can answer that question, Mr. Eisen, not knowing the name of the vessel that departed.

Q. Well, according to the three specific vessels that you testified to, there were additional facilities on those boats? You see the dispatch of April 19th, the dispatch of April 22nd, and the dispatch of May 2nd.

A. If those boats were utilized, that is true.

Q. Well, they would have to be utilized if you were going to answer 16 in answer to Mr. Foster's question, 16 automobile boats utilized.

A. I would assume so; yes.

Q. Now, then, I believe Mr. Foster had you state that all four of your automobile boats were used on Lake Erie during April, May, and June of this year. Do you recall so testifying, agreeing with Mr. Foster when he testified, and had you agree to it?

799

A. I think it was quite probable.

Q. Now, will you refer to your Exhibit 10 and look at your dispatches there and see if you want to change that answer.

A. My reason for saying quite probably, I have no log sheets here.

Q. I understand that, Mr. Hewitt, but after reviewing the boats dispatched according to your Exhibit 10, would you say that all of your automobile boats were used exclusively on Lake Erie during this period?

Mr. FOSTER. Mr. Eisen, I said four of them.

The WITNESS. Now, my reason in saying probably, I am quite certain that some of those automobile boats were not used exclusively on Lake Erie during the entire period.

By Mr. EISEN:

Q. How many automobile boats did you operate this year?

A. The "Woodruff," "Sonoma," "Crescent City"——

Q. Well you only have four automobile boats, and when Mr. Foster asked you if four of your automobile boats were used exclusively on Lake Erie, he asked you if all of your automobile boats were used exclusively on Lake Erie.

Mr. FOSTER. I didn't ask him that.

Mr. EISEN. It will show.

By Mr. EISEN:

800 Q. Now, your Exhibit 10 will show if your automobile boats were used on Lake Superior as well.

A. Well, that is a fact, of course.

Q. Now, refer to your Exhibit No. 1. Refer to those figures for 1940 that Mr. Foster referred to. Have you any way of knowing that if similar tonnage were available this year, and Nicholson Transit Company were in operation, that you would be able to get even the quantity shown in your exhibit?

A. I have no way of determining that; no.

Q. Have you any facts upon which to base on opinion that you would not be able to get all of that tonnage if that was the only amount available and Nicholson Transit were in operation?

A. Well, the fact alone that you add additional competitors in any field, you are going to lose a certain amount of tonnage. That seems to be the most reasonable conclusion.

Q. So even during your slack season, if you had an additional competitor your picture would be worse that it actually is?

A. During a slack period or a period—peak period.

Q. Now, will you refer to your month of October 1940. That showed some 29,000 automobiles, roughly, here, handled, did it not?

A. The mathematics are correct; yes.

Q. Well, if you had the capacity to handle 29,000 automobiles during October, do you know any reason why you wouldn't have a similar capacity during April of the same year?

801 A. No.

Q. Do you know any reason why you wouldn't have a similar capacity during May of the same year?

A. No.

Q. Or June of the same year?

A. No.

Q. Or July?

A. No.

Q. Or August?

A. No.

Q. Or September?

A. No.

Q. Or October?

A. No.

Q. Or November?

A. No.

Q. So if you deducted the amounts shown——

Mr. FOSTER. You forgot December.

Mr. EISEN. I am trying to portray a fair picture, not pull any tricks.

By Mr. EISEN:

So that if you owned the amounts shown in your exhibit, to carry 29,000, the October carrying capacity, that would be a clear indication, would if not, of your additional ability, or additional unused capacity for 1940?

A. I think so.

802 Q. Now, with respect to these bulkers that you have under charter, Mr. Hewitt, do you have any present ideas of not renewing those charters for 1942?

A. Oh, there hasn't been too much considering along those lines as yet. It is a litttle early in the year for it. We anticipate operating those vessels this coming year. It is a little difficult to say whether we will or not at the present moment.

Q. In other words, if there is sufficient tonnage, if in your estimation there will be sufficient tonnage, you will operate them?

A. We hope to.

Q. But you have no fear of refusal to renew those options at the present moment?

Mr. FOSTER. Options?

Mr. EISEN. Or charters.

A. At the present moment; no.

By Mr. EISEN:

Q. Now, Mr. Hewitt, when you reconverted the "Penobscott" and "South Park," was that done after the bulkers had gone out of existence?

A. You are referring now to the bulkers of private industry?

Q. Those owned and operated by other than Nicholson.

A. The bulkers were converted after that operation ceased.

Q. So that even after the bulkers went out of business you still felt that you had surplus automobile-carrying capacity?

803 A. It is rather evident.

Q. Yes; I think it is. Now, Mr. Hewitt, refer to your Exhibit No. 4, please.

A. Yes.

Q. Now, the first line, number of days operated. Will you explain what you mean by number of days operated?

A. I mean by that the number of days that the vessel actually was operated; that is, duly manned or crewed with steam up and available for the movement of tonnage.

Q. Does that necessarily mean the days that the boat is actually running between the ports?

A. No; not necessarily. She could have been tied up because of lack of tonnage or some boiler work for 15 or 16 hours, or something of that sort.

Q. So that when you show the number of days operating, you are including the days the boat is in service, even including your lay-up time for minor repairs?

A. That is correct.

Q. And those days the boat is not used because of unavailable tonnage dispatched on that particular day?

A. That is true.

Q. So as a matter of fact you have been very liberal in your exhibit by not showing actual days the boat was running between the ports?

A. We think so.

804 Q. If you had shown the number of days the boat was actually running between the ports would that probably be substantially less than the number you show?

A. The 252?

Q. And the 197 and the 105, and so forth.

A. I think it would; right straight down.

Q. So that if you had shown only the days the boats were actually running rather than using the phrase "in operation," as you described it, the number of running days not utilized would be in excess of 461 days, would it not?

A. That is true.

Q. So that rather than exaggerating the picture you have reduced it and shown it in a very modest way?

A. That is correct.

Q. And if you had shown it literally, the number of days running, what influence would that have had?

A. An increase.

Q. So that you have taken into consideration lay-up days for minor repairs and things like that in your figures?

A. Yes.

Q. Now, refer to your Exhibit No. 2, Mr. Hewitt. Have you made any check to determine whether the number of automobiles moving or tendered for movement through the Port of Milwaukee to all lines in 1941 was greater or less than the amount ten-

805 dered to all lake lines in 1940? Did you hear the question?

A. I would like to have it repeated.

(Question read.)

A. I have for that period up to August 1st.

Q. Through Milwaukee?

A. If I understand your question correctly.

Q. Exhibit No. 9 is the Nicholson Universal Steamship Company. Now, I ask you if you have a study of the tonnage carried by all lake lines.

A. Oh, I am sorry. Through the Port of Milwaukee?

Q. Through the Port of Milwaukee.

A. No; I don't.

Q. You haven't made a study.

A. No.

Q. So, not having made the study, you don't know, do you, Mr. Hewitt, whether the 1941 tonnage carried by your company through Milwaukee is a greater or lesser percentage of the total amount of automobiles tendered, 1941 over 1940, do you?

A. I do not know that.

Q. You do not know.

Before you could determine whether 1941 showed a reduction or an increase over 1940, would you not have to have in your possession the figures of the total movement for both years?

Mr. FOSTER. Mr. Examiner, I cannot see where this is material.

806 Mr. EISEN. Mr. Foster tried, Mr. Examiner, to show through cross-examination that the 1941 tonnage carried by the Nicholson Universal through Milwaukee was less than the tonnage in 1940.

Mr. FOSTER. You showed that yourself on your own exhibit.

Mr. EISEN. We haven't shown anything of the kind. I just asked the witness whether that was a percentage increase on the total or a percentage reduction on the total, without having the figures, and the witness said no.

Mr. Foster opened his question by saying, "You have shown that 1941 tonnages were greater than 1940. That was all of the lakes. There was no showing as to the total Milwaukee. Now he says the exhibit shows Milwaukee was a reduction, or less than 1940.

Well, that may be a reduction in actual figures as shown by the exhibit, but the witness' testimony, and I think Mr. Foster's testimony is it is the proportionate reduction predicated on the entire movement.

Mr. FOSTER. No. I was talking about the Nicholson-Universal.

Mr. EISEN. That might have been 40 percent of the total. And in 1941 while only 35 percent is shown, that might have been 80 or 90 percent of the total.

Mr. FOSTER. That isn't material.

Mr. EISEN. It certainly is material. The burden is on
807 you to show the figures.

By Mr. EISEN:

Q. Now, refer to your Exhibit No. 1, Mr. Hewitt, please.

Now, in operations going through the Port of Green Bay in previous years will you please tell us approximately what percent of the tonnage was destined locally to Green Bay and what percentage of it moved beyond Green Bay to points outside of Green Bay locally?

A. Going back to previous years, and with reference to Green Bay business, I would like to qualify my statement to the extent that it is based entirely on what I have been able to develop from our records in Detroit.

My recollection is that, oh, probably 80 percent of the business moving through Green Bay——

Mr. FOSTER. Mr. Examiner, I am going to have to object. The records are the best evidence.

Mr. EISEN. Does the Commission want all these manifests and files? We are perfectly willing to give them to you. I have never heard of the Commission refusing to take testimony under oath of what the records show. Those records are open to Mr. Foster or anybody else.

Exam. GRAY. I think——

Mr. FOSTER. I object to Mr. Hewitt testifying as to what proportion of those cars moved locally and what portion of them moved beyond Green Bay, unless he does have actual
808 knowledge of those facts.

Exam. GRAY. He has just testified that he has examined his own records.

Mr. FOSTER. If he has examined his own records and has those figures and testifies to his own knowledge from the examination of those records, I have no objection.

Mr. EISEN. Will you read Mr. Hewitt's opening statement?

(Answer read.)

Mr. FOSTER. Now, he has qualified it and said "to the best of his recollection."

Mr. EISEN. He has qualified it to show that he does not know this independently of his records. I have instructed all of my witnesses to lean over backwards to be fair. He is not saying he knows it of his own knowledge independent of records when he doesn't.

I think the witness should be commended.

Exam. GRAY. The witness may answer.

The WITNESS. It would develop, Mr. Foster, that approximately 80 percent of that business moving through Green Bay is destined to points beyond the port itself.

By Mr. EISEN:

Q. And those records indicate that the movement beyond Green Bay took place via what facilities?

A. Oh——

Q. I am not asking you for proportions.

A. Rail, driveaway, various modes of transportation.

809 Q. Now, with respect to the through rail rates that previously applied through the Port of Green Bay, were those rates canceled or were the routings changed to have those same rates apply via a different port?

A. I cannot answer it from a rate point of view.

Q. Now, Mr. Hewitt, you are in actual and close touch with operations of the automobiles on the lakes, Lake Erie and Lake Superior, every day operating? Are you not?

A. That is true.

Q. You knowledge of the operations on the lakes is knowledge obtained in the last two or three years, is it not?

A. As to the operations throughout the entire Great Lakes district?

Q. Yes, sir.

A. That is correct.

Q. Now, I am going to ask you an opinion question, and I am asking you to predicate it on the knowledge that you have obtained in the last few years, not knowledge that you have obtained in 1928 and 1929, since when conditions have changed, but on your present knowledge, not as a solicitor of automobiles, but as an operating executive, as a man in charge of transportation of the largest automobile carriers on the Great Lakes. Have you made a study and have you determined whether or not there is need

for any additional automobile capacity on the Lakes, over

810 and above the capacities of the existing lines, namely, the Nicholson Universal Steamship Comany, the MAT, the D. & C., and the Great Lakes Transit?

A. This study has been made, and considerable discussion had on it, and unquestionably, in my opinion, there is no requirement for additional carriers in the carriage of automobiles on the Great Lakes.

Mr. Eisen. That's all.

Re-cross-examination by Mr. Foster:

Q. Mr. Hewitt, when you spoke of the capacity of the "Woodruff" and the "Sonoma" as 450 cars, that means 450 of the smallest cars that you transport, does it not?

A. Not necessarily. It may be 460. As a matter of fact, I think we can produce some loads this year where we have had 460 cars. It is dependent, however, on the size and the number of small cars that are mixed together with large cars.

Q. Yes.

A. And again the capacity of the vessel is cut down to some extent as to the total number of cars placed aboard by the number of large Fruehoff trailers that you might load, so the capacity of 450 cars is a moderate capacity. I think the average will be a little better than that over an operating season.

Q. When you speak of a vehicle, that includes a truck or Plymouth or Chevrolet, or anything?

A. Or Cadillac.

811 Q. And you have no actual knowledge because you were there and saw it, or any check you have made of your records, as to what the shipments to Duluth, when you ship any less than 450, consisted of, have you?

A. I don't know as I got your question, Mr. Foster.

Q. I say, you have no personal knowledge either from a check that you have made or because you were there and observed it, that you did in fact have additional capacity on those two boats that went to Duluth early in season?

A. I don't have that—those facts before me at the moment. To the best of my recollection, I don't—I do recall vessels having departed for Duluth, automobile vessels, short of the full capacity.

In other words, we could have carried additional cars and dispatched them light.

Q. You do recall such instances?

A. I do; yes.

Q. But you cannot tell us when those instances were?

A. I cannot.

Mr. EISEN. Can you tell us when you wired Mr. Holt and told him you had additional capacity, and solicited his automobiles?

The WITNESS. I don't recall the dates, but it was early in the operating season, possibly just prior to the opening, and I

812 think we wired him on more than one occasion. Undoubtedly that went along for several weeks after the opening of navigation.

Q. That you had space on departing boats?

A. Yes.

Q. Available to him?

A. Yes.

By Mr. FOSTER:

Q. Did you tell him how much space?

A. We told him we had plenty of unused space and could help him out.

Q. Could you help him out?

A. Oh, yes. We didn't send such wires except with all sincerity, Mr. Foster.

Q. I know that.

A. Whatever he tendered to us we would have been able to move.

Q. Well, you know as a matter of fact, Mr. Hewitt, that it takes considerable time to clear the cars through the factory, and so forth, and Mr. Holt simply couldn't wire Chrysler to send Nicholson Universal a hundred automobiles because they had a boat leaving at six?

A. I have seen that work out a good many times. It is possible.

Q. To Duluth?

A. To any ports.

Q. Where one particular dealer can get a hundred cars by just wiring in?

813 A. It has been done in many cases.

Q. Under the present conditions is it done?

A. You mean the defense period?

Q. I mean have you seen that done this season.

A. I have seen it done on 50 or 60 automobiles this season. I know that it has happened on many occasions in the past for a hundred or better.

Q. Except for the general statement, Mr. Hewitt, you have no records with you, or any independent knowledge as to the additional space that you had on any particular boat going to Duluth at any time?

A. That is correct.

Q. Including the times that you wired Mr. Holt?

A. That is correct. I would like to say that at the time we wired Mr. Holt, however, we had several vessels tied up at the Detroit docks that were idle and had he chosen to give us four or five or seven hundred automobiles we would have moved them.

Q. That was before the boats went out in the spring?

A. Yes; and shortly thereafter, as I recall.

Q. After they once went out and the automobiles really started moving, you didn't have to lay them up again until the change of model. Is that right?

A. Oh, we continually solicited Mr. Holt's account.

Q. As a matter of fact, when you sent these first wires it was at about the time that the Nicholson Transit Company

814 started moving the Holt's cars, was it not?

A. Well, I believe they started their operations in the spring, and that was the normal period for us to be out after additional tonnage; that is correct.

Q. And you have no available data here with you except just the general statement that you could have moved them, as to just what boats would have been used, or just how you would have

transported them Detroit to Duluth, the 4,000-odd cars that were transported by the Nicholson Transit Company?

A. I don't have the data available to name the specific boat to you, Mr. Foster, but there isn't any question in my mind, or I think in anybody else's mind, in either our traffic or operating department but what we could have made movement of the cars.

Q. But despite that very strong feeling, no one in your organization has prepared any data showing the schedule?

A. We have no schedule.

Q. I mean to show that you could actually have moved them. I mean, you have no actual data showing the movement of your ships to show that you could have moved those cars, except the general feeling that if they had made a tender you would have moved them?

Mr. ELDRED. Just a moment.

I think we are going far beyond the scope, in the conjecture. I don't see where there is any duty or reason why this
815 man should sit down and say what steamer could have moved on such and such a date. They have made the statement, and if they want to prove it, let them put on a witness.

Mr. EISEN. Mr. Examiner, the burden of proof is clearly on the applicant. If the applicant feels that in our helping the Commission we are omitting anything he is at perfect liberty to fill it in and present the true picture, which he should have done in the first instance. But I think our testimony and exhibits so far speak for themselves.

Exam. GRAY. I think it would not help your application very much, if any, to know the names of the ships that might have been used.

Mr. FOSTER. What is that?

Exam. GRAY. I think that it is not essential to you.

Mr. FOSTER. Well, Mr. Examiner, they have testified to these general statements. They are a protestant in our case. They also have a complaint case which I understand is going to be consolidated. Now, I submit just the general statement that they could move it goes to the weight of their testimony; and I am asking him what the basis of that is, or if he has selected any data or any records to bear out his general opinion.

That is certainly within the scope of cross examination.

Mr. EISEN. I think the question is misleading. We have ten exhibits. We have offered truckloads of supporting data. The exhibits are here. The testimony is here. I don't know
816 what Mr. Foster wants except that he wants us to come in and prove his case. We have factual evidence, something no one of the applicant's witnesses has produced. He has pro-

duced exhibits. He has not said he got the data from newspapers or from sources from which the data is not obtainable, which we shall show in connection with applicant's witnesses.

Mr. FOSTER. Will you read the question?

(Question read.)

Mr. EISEN. There is an objection on the record, Mr. Examiner, of Mr. Eldred and myself.

Exam. GRAY. I will sustain the objection.

Mr. FOSTER. Exception.

The purpose of the question was, I was endeavoring to find out on what this witness bases his opinion.

Exam. GRAY. I think he has established his opinion, Mr. Foster. He has testified that he has prepared these exhibits from the records of his company and is familiar with them.

Mr. FOSTER. None of these exhibits, Mr. Examiner, have anything to do with the questions I have asked, despite Mr. Eisen's long oration.

Mr. EISEN. Mr. Examiner, I think in all fairness the exhibits show the full factual data. If you refer to the exhibits you will get the number of days, the various trips, the number of boats dispatched. Now, if Mr. Foster wants to know the names
817 of the individual boats dispatched, I cannot by any stretch of the imagination determine what difference it makes to determine whether the first boat dispatched was the "Woodruff" or anything else.

Mr. SULLIVAN. Mr. Eisen, the Examiner has ruled with you. Why argue?

Mr. EISEN. But he is continuing the argument.

Mr. SULLIVAN. But the Examiner has not changed his position. Maybe he will if you continue.

Mr. FOSTER. Are you through?

Mr. EISEN. I am through.

Mr. SULLIVAN. Mr. Examiner, shouldn't there be a pause in the day's operations?

Exam. GRAY. Yes. I didn't want to interrupt your cross-examination. If you are not approximately through we will recess. If you are, we will stay here.

Mr. FOSTER. I simply couldn't tell. I may ask another question and Mr. Eisen may talk until noon.

Exam. GRAY. We will recess.

(There was a short recess taken.)

Exam. GRAY. Proceed.

By Mr. FOSTER:

Q. Mr. Hewitt, does your Exhibit 10 truly reflect the number of cars that you might have carried from Detroit to Duluth on your boats which were on that run from April 1st to August 2nd?

A. That is the capacity shown, is it a true reflection of what they could actually car ?

Q. And the available part on the form, the righthand corner. Does that reflect the actual conditions, cars which you could have carried, on your bulkers?

A. Very definitely.

Q. And that is the available space you did have?

A. And which was not utilized:

Q. And which was not utilized.

A. That is correct.

Q. In your Duluth service?

A. On this column in every case these bulkers were dispatched to the Port of Duluth, and it was tonnage which we could have utilized in the Duluth service which was passed up because of inadequate tonnage.

Q. And you did not have a bulker which you might have utilized but which you did not utilize between April 15th and May 19th. Is that so?

A. No. During that period such bulkers as we had that were operating to Duluth were utilized.

Mr. FOSTER. I think that's all.

Mr. EISEN. Off the record.

(Discussion off the record.)

Exam. GRAY. You may be excused temporarily.

(Witness excused.)

819 *Docket No. 28678 and W-732, Exhibit No. 1*

Witness: Hewitt

Statement showing total number of automobiles handled by Nicholson Universal Steamship Company to all ports for years 1938, 1939, and 1940

1938

Month	Buffalo	Cleveland	Duluth	Green Bay	Milwaukee
April	8,149	1,319	909	336	775
May	8,644	1,100	898	411	582
June	4,165	1,037	896	144	301
July	2,823	508	262	91	164
August	74	16	7	10	58
September	3,190	275	347	105	805
October	8,364	1,298	823	330	745
November	14,360	2,951	711	431	1,510
December	1,730	349			
Totals	51,499	8,943	3,923	1,862	4,440
Grand total					70,667

Statement showing total number of automobiles handled by Nicholson Universal Steamship Company to all ports for years 1938, 1939, and 1940—Continued

1939

Month	Buffalo	Cleveland	Duluth	Green Bay	Milwaukee
March		3,265			
April	4,714	6,294	126	605	630
May	11,103	2,378	1,344	433	1,457
June	11,525	2,505	931	228	1,067
July	7,644	1,689	536	82	616
August	735	421	147	22	98
September	10,196	1,924	579	447	1,114
October	7,547	2,605	366	410	861
November	1,660	3,127	39	188	306
December		2,594			21
Totals	55,144	26,692	4,068	2,315	6,232
Grand total					94,471

1940

April	837	10,045	1,628	393	1,341
May	12,779	6,822	2,084	470	1,198
June	9,492	6,580	818	300	837
July	3,667	2,566	374	131	268
August	308	912	127		271
September	6,801	4,043	936	412	891
October	16,828	8,978	1,375	696	1,111
November	14,094	8,677	1,568	460	653
December	1,877	2,268			
Totals	66,683	50,846	8,910	2,832	6,542
Grand total					135,813

820 *Docket No. 28678 and W-732, Exhibit No. 2*

Witness: Hewitt

Statement showing total number of automobiles carried by all lake lines operating out of Detroit to all ports for the year 1938, 1939, and 1940*

	Buffalo, N. Y.	Cleveland, Ohio	Duluth, Minn.	Erie, Pa.	Green Bay, Wis.	Houghton, Mich.	Milwaukee, Wis.	Total
1938	97,751	16,673	16,973	652	1,802	68	6,336	140,315
1939	114,283	50,248	21,067	925	2,315	90	8,244	197,872
1940	145,052	78,237	26,640	1,361	2,832	121	10,324	262,967

*Includes figures of Detroit and Cleveland Navigation Company, Great Lakes Transit Corporation, Minnesota Atlantic Transit Company, Nicholson Universal Steamship Company, Western Transit Company.

821 *Docket No. 28678 and W-732, Exhibit No. 3*

Witness: Hewitt

Statement showing the percentage Nicholson Universal Steamship Company tonnage is of the total handled by all lake lines operating out of Detroit during the years 1938, 1939, and 1940*

	Total tonnage	Nicholson Universal Steamship Company tonnage	Nicholson Universal Steamship Company percentage
1938	140,315	70,667	0.5036
1939	197,872	94,471	.4774
1940	262,967	135,843	.5164

Docket No. 28678 and W 532, Exhibit No. 4

Witness: Hewitt

Statement showing actual and potential operating days for the year 1940, also maximum carrying capacity if vessels were utilized to full capacity

NICHOLSON UNIVERSAL STEAMSHIP COMPANY VESSELS

1940	Crescent City	Coralia	Penobscot	Sonoma	Woodruff	South Park
Number of days operated	141	197	105	162	194	252
Potential operating days	252	252	252	252	252	252
Automobiles actually carried	15,991	32,924	7,765	21,093	27,023	28,413
Number of operating days not utilized	111	55	147	90	58	0
Automobile capacity per trip	365	370	325	450	450	220
Total number of operating days not utilized						461

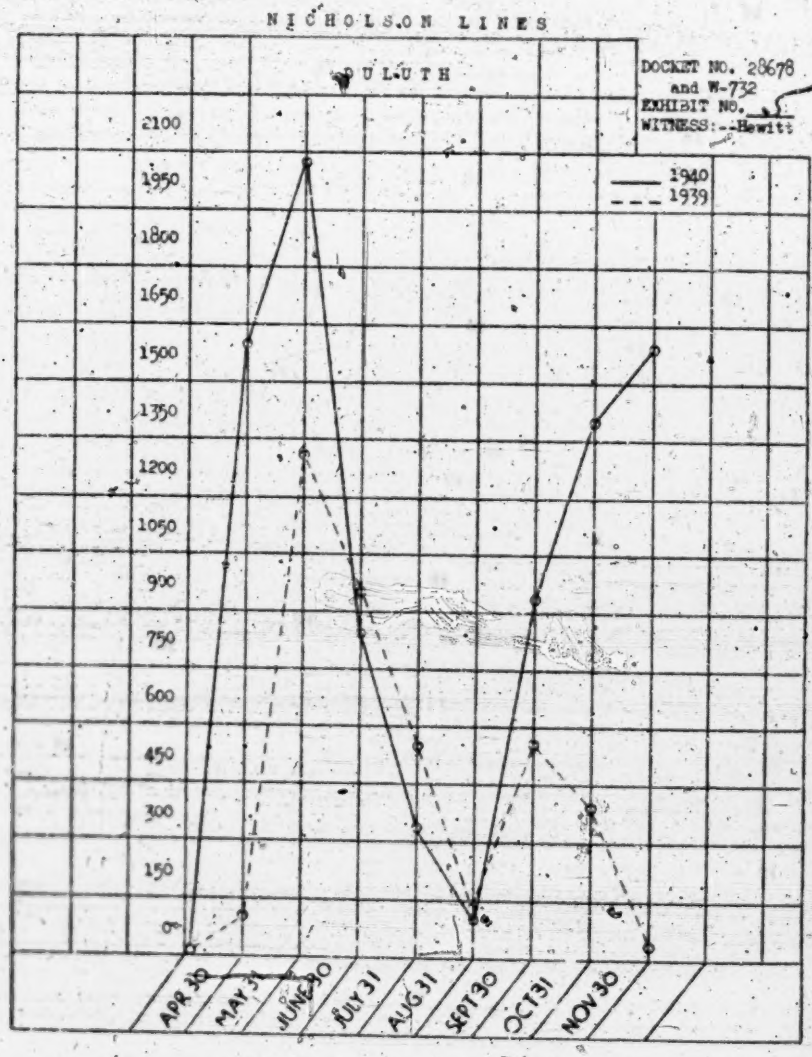
BULK DIVISION VESSELS

	Sultana	Sonora	Cornelius, Jr.	Cornelius
Operating days	239	243	232	190
Bulk fleet in Duluth Service 40% of time (Duluth Service) (days)	96	97	93	76
Automobile capacity per trip	50	50	70	70
Automobile capacity per season*	400	400	490	420
Nicholson Universal Steamship Company automobiles actually carried	174	152	428	255
Total additional bulker capacity	226	248	62	165

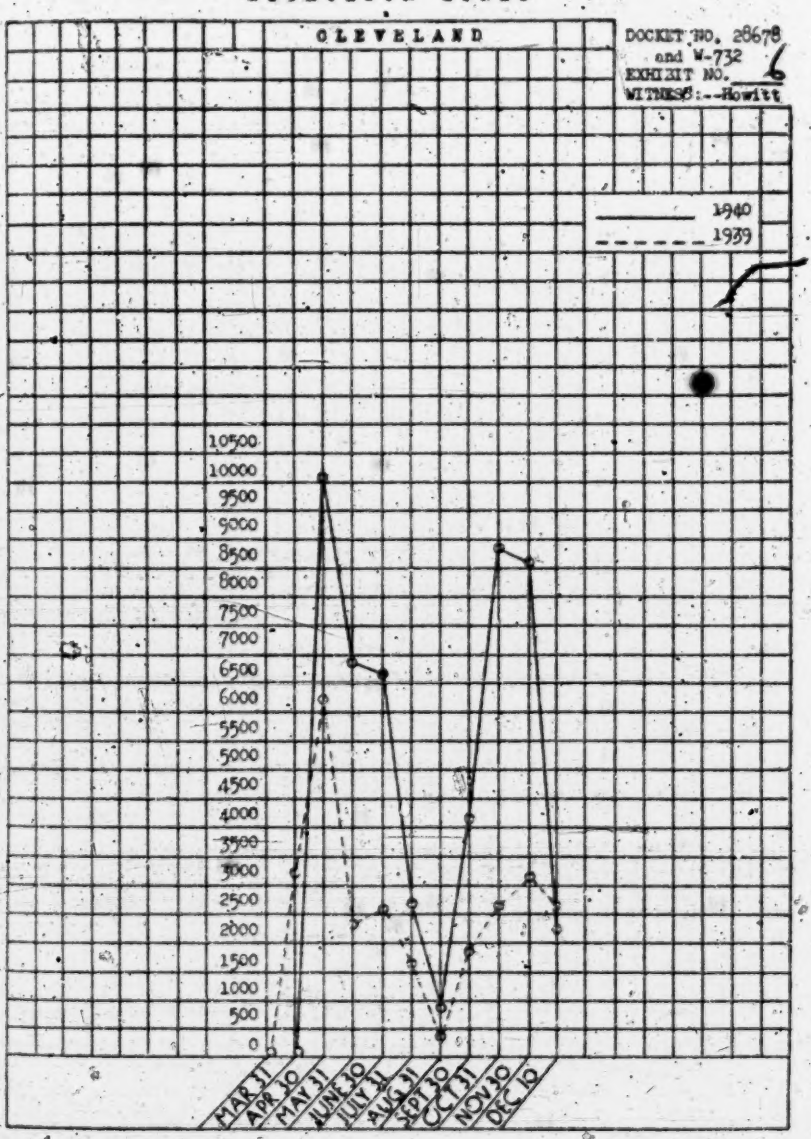
*Figured at 12 days to a trip.

	Autos
Additional automobile carrying capacity to Buffalo if entire unused capacity of fleet was placed in this service	87,342
Additional automobile carrying capacity to Cleveland if entire unused capacity of fleet was placed in this service	17,685
Additional automobile carrying capacity to Duluth if entire unused capacity of fleet was placed in this service (exclusive of bulk division)	20,114
Bulk Division	1470
Total	29,584
First sailing to Buffalo	4-27
First sailing to Cleveland	4-4
First sailing to Duluth	4-19

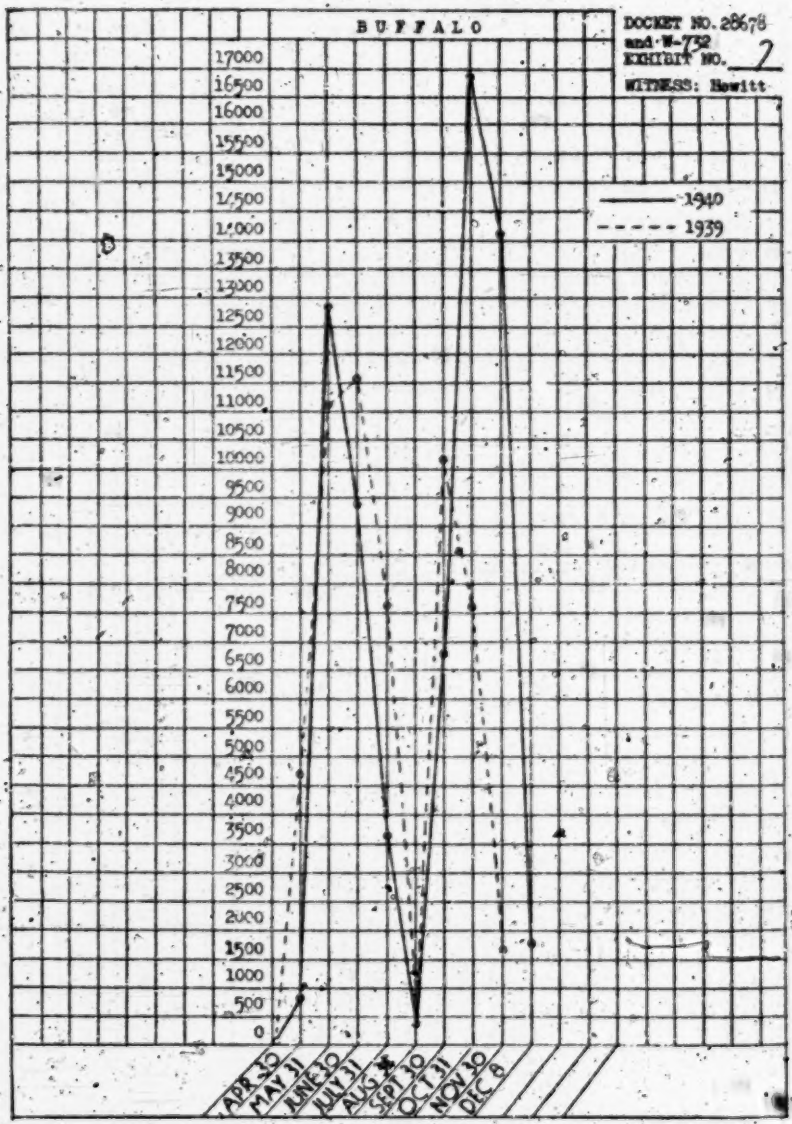
1Exclusive of 231 cars carried for Minnesota Atlantic Transit Co.


NICHOLSON LINES
DULUTH
DOCKET NO. 28678
and W-732
EXHIBIT NO.
WITNESS:--Hewitt
1940
1939
2100
1950
1800
1650
1500
1350
1200
1050
900
750
600
450
300
150
0
APR 30
MAY 31
JUNE 30
JULY 31
AUG 31
SEPT 30
OCT 31
NOV 30

NICHOLSON LINES



NICHOLSON LINES



827 *Docket No. 28678 and W-732, Exhibit No. 8*

Witness: Hewitt

On hand statement of autos, day by day, to Buffalo, Cleveland, and Duluth for the months of May, June, October, and November 1940

Date	Buffalo shipments on hand Detroit 7:00 a. m.	Number of autos dispatched that day	Cleveland shipments on hand Detroit 7:00 a. m.	Number of autos dispatched that day	Duluth shipments on hand Detroit 7:00 a. m.	Number of autos dispatched that day
5-1	6	345	76	225	182	
5-2	567		0	496	359	
5-3	835	1,060	73	229	550	
5-4	783		120	75	641	
5-5		441		340		248
5-6	0	376	3		394	224
5-7	44	451	20	211	178	
5-8	223		38	409	240	327
5-9	563	304	95	216	67	
5-10	999	845	130	217	203	
5-11	1,173	297	184	205	321	
5-12		981				30
5-13	0		0	61	291	
5-14	161	442	42	213	0	313
5-15	17	454	27	416	91	
5-16	400	297	125	204	211	
5-17	560	847	33	550	270	
5-18	987	298	147	167	56	274
5-19		730				48
5-20	0			66		
5-21	137	295	40	392	36	
5-22	35	450	73	213	31	68
5-23	459	271	112	408	139	
5-24	367	899	55	200	338	
5-25	687	754	118	365	321	
5-26		362				321
5-27	2	385	0	161	323	
5-28	0	622	40	362	50	
5-29	281		43	196	178	231
5-30	691	370	22		0	
5-31	340	397	27	47	0	
6-1	15		10		4	
6-2						
6-3	15		10		1	1
6-4	71	441	48	385	1	
6-5	270	361	87	408	52	
6-6	69	456	43	262	170	
6-7	315	849	41	216	282	
6-8	75	349	155		274	274
6-9		200		170		
6-10				148		
6-11	42	447	8	95	11	6
6-12	319	372	102	386	63	
6-13	562	759	50	147	80	5
6-14	141	722	22	320	134	
6-15	216		75	216	171	178
6-16		278		89		
6-17	1			134		
6-18	85	448	20	212	3	
6-19	197	574	147	497	42	
6-20	119		122	218	85	
6-21	202	644	190	409	129	74
6-22	467	451	239		95	
6-23		102		270		
6-24				134	96	
6-25	49	430	20	213	99	20
6-26	90	458	223	619	137	
6-27	172		105	215	177	
6-28	0	663	39	377	223	269
6-29	455		195	194	41	
6-30		561		32		
10-1	112	447	53	206		178
10-2	158		102	200	45	
10-3	652	445	52	498	46	54
10-4	799	640	69	354	34	69
10-5	783	437	134	204	102	
10-6		563		15		
10-7		216	3	142	122	
10-8	272	319	114	323	166	
10-9	326	301	94	348	206	
10-10	580	651	177	197	265	40
10-11	831	986	145	351	278	

On hand statement of autos, day by day, to Buffalo, Cleveland, and Duluth for the months of May, June, October, and November 1940—Continued

Date	Buffalo shipments on hand Detroit 7:00 a. m.	Number of autos dispatched that day	Cleveland shipments on hand Detroit 7:00 a. m.	Number of autos dispatched that day	Duluth shipments on hand Detroit 7:00 a. m.	Number of autos dispatched that day
10-12	911		100	103	119	119
10-13		664				13
10-14		816	14	204	225	173
10-15	106	665	111	205	60	60
10-16	403	757	113	323	62	
10-17	1,113	579	229	353	131	13
10-18	1,320	723	295		201	48
10-19	1,872	1,027	453	366	228	
10-20				354		
10-21	679	890	251	450	246	
10-22	719	563	49		250	46
10-23	1,204	647	101	383	210	110
10-24	1,342	806	20	370	290	
10-25	1,431	426	131	582	318	32
10-26	1,463	835	227	207	328	118
10-27		427		143		71
10-28	363	439	19	359	193	
10-29	592	1,014	112		117	
10-30	766	426	94	361	255	94
10-31	1,177	648	231	733	343	122
11-1	1,137	806	284	338	302	
11-2	1,463	204	405		377	
11-3		664		444		328
11-4	707	700	26	192		57
11-5	508	203	122	371	68	
11-6	950	293	197		181	
11-7	1,292	653	116	375	298	
11-8	1,887	728	218	380	447	
11-9	1,852	441	177	585	147	342
11-10		440		382		94
11-11	509	202	99		183	
11-12	1,169		346	369	283	
11-13	1,430	444	311		504	
11-14	1,428	426	411	343	747	
11-15	1,709	660	373	367	746	
11-16	1,851	561	609	376	746	
11-17		438		374		
11-18	1,415	644	248	376	734	57
11-19	1,115	737	186	379	342	357
11-20	1,403	205	376		322	
11-21	1,476	882	371	374	320	
11-22	990		31	373	320	
11-23	1,600	655	155	372	320	
11-24		439		206		
11-25	601	207		240		332
11-26	473	891	87			
11-27	536	291	68	540		
11-28	842	467	31	368		
11-29	831	431	456	368		
11-30	889		428	373		

829 *Docket No. 28678 and W-732, Exhibit No. 9*

Witness: Hewitt

Statement showing the number of automobiles transported by the Nicholson Universal Steamship Company for that portion of 1941 up to August 1 as compared with the number for the corresponding periods of 1938, 1939, 1940

	Buffalo	Cleveland	Duluth	Green Bay	Milwaukee	Total
1938	23,781	4,054	2,335	982	1,822	32,974
1939	34,986	16,021	2,937	1,248	3,770	58,962
1940	26,775	26,033	4,904	1,294	3,614	62,620
1941	50,606	35,351	5,877		3,571	95,405

830 *Docket No. 28678 and W-732, Exhibit No. 10*

Witness: Hewitt

Statement showing number of Duluth automobiles on hand each day at Detroit for 1941, the number of automobiles dispatched and capacity of Nicholson Universal Steamship Company bulkers available but not utilized in the Duluth service

1941	Detroit on hand 7:00 a. m.	Number of autos dispatched	Bulkers available and capacity
April			
1	0		
2	0		
3	58		
4	62		
5	62		
6	62		
7	62		
8	62		
9	62		
10	71		
11	74		
12	93	48	
13	45		
14	45	36	1 bulker 60.
15	9		1 bulker, 70.
16	51		
17	110		
18	199	64	
19	445	427	
20	18		
21	18		
22	155		
23			
24	343		
25	497		
26	610		
27		460	
28		64	
29	286		
30	403	70	
May			
1	348		
2	465		
3	631	359	
4		50	
5	255	5	
6	383		
7	458		
8	514	64	
9	471	63	
10	490		
11	196	358	
12			
13	253		
14	319		
15	319		
16	370	66	
17	328		
18	18	357	
19			1 bulker 70.
20	52		
21	111		
22	157		
23	217		
24	295	318	
25			1 bulker 70.
26			
27	49		
28	137		
29	175		1 bulker 70.
30	190	21	
31			
June			
1			1 bulker 60.
2			
3	52		
4	100		
5	182		1 bulker 70.
6	232		
7	345	353	1 bulker and barge 85.
8			
9			2 bulkers 123.
10	56	5	
11	136		
12	205		
13	282		
14	336		
15		365	
16			
17	64		
18	127		1 bulker and barge 85.
19	218	64	
20	205		
21	277		
22	305		
23		1	
24	365		
25	464	360	
26	195	1	
27	270		
28	350		
29			
30	315		1 bulker and barge 85.
July			
1	119	356	
2	206	1	
3	322		
4	518		
5	584		
6		349	
7	0	244	1 bulker 50.
8	57		
9	75	64	
10	154		
11	190	48	
12	150		
13		70	
14	84		
15	123	246	
16	0		
17	67		
18	143		
19	206		
20	206	207	
21	20	66	
22	34		
23	115		
24	166		
25	146	49	
26	166		
27			
28	204		
29	242		
30	264	64	
31	284		
Aug.			
1	348		
2	8	349	

833 Form B. W. C. 2 WC.....

Plaintiffs' Exhibit No. 4

May 31, 1941 965378

APPLICATION FOR ☒ CERTIFICATE AS COMMON CARRIER BY WATER

☐ PERMIT AS CONTRACT CARRIER BY WATER SUBJECT TO THE INTERSTATE COMMERCE ACT

(Before answering, read general instructions attached hereto)

Before the Interstate Commerce Commission 1941

Application of T. J. McCarthy Steamship Company a Michigan
(Name) (Trade Name)
corporation.

(Status as individual, partnership, association, corporation, fiduciary, etc. If a corporation, name the State of incorporation. If a partnership, give names and addresses of all partners. If an association or corporation, attach a list of names and addresses of directors and officers.)

210 Wayne Street, Detroit, Michigan.
(Street address) (City) (State)

Application below is for the appropriate authority to (check applicable status):

☒ To continue an operation in existence January 1, 1940, and continuously thereafter as a ☒ common carrier of ☐ passengers.

☐ To continue an operation not existing January 1, 1940, but existing February 1, 1941, as a ☐ contract carrier of ☒ property by water in interstate or foreign commerce (as defined in section 302 (i)).

Application for certificate as common carrier of property covers.

☐ All commodities.

☐ Commodities with exceptions as detailed in Exhibits "A" or "B."

Application for a contract carrier permit of property covers.

☐ All commodities with exceptions as detailed in Exhibits "A" or "B."

☒ Specific commodities as detailed in Exhibits "A" or "B."

Application covers ☒ regular routes, ☒ irregular routes.

834 Operation is ☐ year around, ☒ seasonal between—Varies due to ice conditions.

In support of this application, applicant submits the following exhibit attached hereto and made a part hereof:

☒ Exhibit "A". ☐ Exhibit "B." (See General Instructions.)

Applicant will furnish such additional information to sub-

stantiate the applicant's prayer as the Commission may require.

Applicant has complied with the order of the Commission relative to the service on interested parties, as shown below.

Applicant reserves the right to claim exemption from any and all provisions of Part III of the Interstate Commerce Act, the filing of this application not being deemed a waiver thereof, and the operations, if any, which applicant believes to be exempt are those described below:

(If exemption is claimed in respect of any operations applicant should here describe such operations, and in each instance make reference to the statutory provision or provisions under which the exemption is claimed.)

Exemption is claimed on bulk commodities, except when transported with nonexempt commodities.

Wherefore, The applicant herein prays: That the Commission issue a Certificate to operate as a Common _____
(Certificate) (Permit) (Common Carrier) (Contract Carrier)
of Property _____
(Passengers) (Property generally, or with exceptions, or
_____
specific commodities only, as detailed in Exhibits "A" or "B")

B. W. C. "A" I and applicant further prays that if the facts herein contained show that applicant, although applying for a Certificate, (Certificate) (Permit)
is entitled to a Permit, this application be considered one for the (Permit) (Certificate)
appropriate form of authority.

Dated this 28th day of May 1941.

T. J. McCARTHY STEAMSHIP COMPANY,
(Applicant)
By T. J. McCARTHY, *President*.
(Title)

835 OATH

STATE OF MICHIGAN,
County of Wayne, ss:

T. J. McCarthy (Name of affiant) makes oath and says that he is the President (Title of affiant) of the T. J. McCarthy Steamship Company (Name of applicant); that he is authorized on the part of said applicant to verify and file with the Interstate Commerce Commission this application and exhibits attached hereto and made a part hereof; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof; that he has knowledge of the matter set forth therein, and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

T. J. McCARTHY.

Subscribed and sworn to before me, a Notary Public in and for the State and county above named, this 28th day of May 1941.

[SEAL] L. D. TRAUT.

My commission expires June 4, 1943.

CERTIFICATE OF SERVICE

A copy of this application has been served by receipted mail on the Governors of the following States: Michigan, Ohio, Pennsylvania, New York.

A notice of the filing of this application (Form B. W. C. 5) has been served by receipted mail on the following known waterline competitors: Detroit and Cleveland Navigation Company, Detroit and Cleveland Steamship Company, Great Lakes Transit Corporation, Minnesota Atlantic Transit Company and Nicholson Universal Steamship Company.

Postal receipts or certificates of mailing covering the above are attached hereto.

Date: May 29, 1941.

(Signed) THOMAS L. LOTT.

836 EXHIBIT "A"

(This exhibit to be filled out by applicants for common carrier certificates or contract carrier permits claiming status under the provisos of section 309 (a) or 309 (f) of the Interstate Commerce Act.)

T. J. McCarthy Steamship Company

(Name of Applicant)

Except as otherwise noted, the following information is to be as of January 1, 1940. The information given should, where necessary, cover a sufficient period prior to such date to give a clear and fair picture of the nature and extent of the business of applicant which properly should be covered by the certificate or permit sought. Wherever changes in the nature or extent of the operation have been made since January 1, 1940, they should be clearly indicated.

DESCRIPTION OF TRANSPORTATION SERVICE, ROUTES, PORTS SERVED REGULARLY AND IRREGULARLY, AND OTHER PERTINENT INFORMATION

I. Description of transportation service:

A. Applicant (or predecessor in interest) was engaged in the business of transporting, in interstate or foreign commerce:

(1) ☐ Commodities generally.

(2) ☐ Commodities generally, except _____

(Indicate exceptions either specifically or by their general nature)

(3) ☒Special commodities. See Exhibit B. W. C. "A" I.
(Indicate specifically commodities transported)

(4) ☐ Passengers.

B. Applicant (or predecessor in interest) undertook to transport passengers or property for the general public for hire. No.
(Yes or No)

If answer is "No," state for whom applicant (or predecessor in interest) transported since January 1, 1940, or prior thereto, under special contracts or agreements:

Name, Detroit and Cleveland Navigation Company, Address, (Street, City, and State) 210 Wayne Street, Detroit, Michigan; wirtten or verbal contract or agreement and date thereof, February 18, 1937 and renewed on February 1, each year thereafter including 1941.

Commodity covered, see Exhibit B. W. C. "A" II; volume agreed to be transported, capacity of vessel during season; duration of contract or agreement, option for renewal through 1942.

NOTE: Lines (1a), (2a), (3a), etc., are a continuation respectively of the same contract referred to on lines (1), (2), (3), etc.)

837 C. Applicant (or predecessor in interest) has continued to operate as above stated without any change in the transportation service as described above and is now so operating. No
(Yes or No)

If answer is "No", state in detail character and extent of such change in service. Interrupted by ice conditions on Great Lakes.

D. If the changes indicated in the answer to (C) above represent interruptions of transportation service since January 1, 1940, caused by conditions over which applicant (or predecessor in interest) had no control, give facts and reasons clearly and in detail. No interruptions, except due to ice conditions.

E. Applicant (or predecessor in interest) is engaged in furnishing seasonal transportation only. Yes. If the answer is "Yes,"
(Yes or No)

state the limits of the seasonal operation, naming month of commencement and month of cessation. This varies due to ice conditions on Great Lakes. If the above seasonal perioc does not include January 1, 1940, was applicant (or predecessor in interest) rendering above service during the seasonal period ending prior to that date? Yes Was applicant (or predecessor in interest) providing same service during seasonal period subsequent to January 1, 1940? Yes Outline fully any changes in character and extent of service between seasonal operation including, or prior to, January 1, 1940, and subsequent seasonal operation: No difference except ports may open or close earlier one year than another.

II. DESCRIPTION OF ROUTES:

A. Regular Routes: Ports or points to or from which applicant (or predecessor in interest) regularly operated as of January 1, 1940, or prior thereto, and number of revenue calls at each between January 1, 1940, and date of application: Between Detroit, Michigan, and Cleveland, Ohio, and between Detroit, Michigan, and Buffalo, New York; also between Buffalo, New York, and Cleveland, Ohio. Number of revenue calls at each port via T. J. McCarthy Steamship Company from January 1, 1940, to date of this application (May 28, 1941), Cleveland, Ohio (78), Buffalo, New York (78), Detroit, Michigan (51).

B. Irregular Routes: Ports or points to or from which applicant (or predecessor in interest) offered occasional but irregular service as of January 1, 1940, or prior thereto, and number
838 of revenue calls at each between January 1, 1940, and date of application: Between Detroit, Michigan, and Erie, Pennsylvania. No revenue calls made between January 1, 1940, and date of this application (May 27, 1941).

C. Has applicant (or predecessor in interest) acquired by purchase or otherwise a route or routes since January 1, 1940? No
(Yes or No)
If so, attach statement, properly designated, giving, for each such route, the information requested in A and B above, also name and address of predecessor. Attach copy of purchase agreement, or other documents, evidencing the acquisition of each such route or routes.

D. Does applicant apply for rights over any route or routes operated by others under agreement? No If so, attach statement,
(Yes or No)
properly designated, giving, for each route, the information requested in A and B above, also name and address of operator. Attach copy of charter, operating contract, or other agreement.

E. Does applicant apply for rights over any route or routes over which it operates ships owned by others under charter, contract, or other agreement? No If so, attach statement, properly
(Yes or No)
designated, giving, for each such route, the information requested in A and B above, also name and address of the other party to such charter, contract, or agreement. Attach copy of such charter, contract, or agreement.

F. Has applicant (or predecessor in interest) abandoned or disposed of by sale or otherwise any route or routes since January 1, 1940? No If so, attach statement, properly designated, giving,
(Yes or No)
for each such route, the information requested in A and B above, the manner and date of disposition, and name and address of suc-

cessor, if any. Attach copy of the sales agreement or other documents evidencing such disposal.

G. Were operations on any of the above routes or parts of such routes covered by answer to questions C, D, E, or F seasonal? Yes (Yes or No)
If so, attach statement, properly designated, giving facts clearly and in detail, showing applicant's customary operation (or that of predecessor in interest), including months of normal operating season.

H. If applicant (or predecessor in interest) is subject to Part III of the Interstate Commerce Act in transportation of passengers or property in interstate or foreign commerce only by reason of participation in through routes and joint rates, name carriers with whom such traffic was interchanged as of January 1, 1940, or prior thereto, and interchange points: No.

839 State clearly any changes since January 1, 1940:

III. Description of Equipment:

A. Total number of vessels in commission and operated by applicant (or predecessor in interest) as a common or contract carrier on January 1, 1940, including vessels owned, chartered, or leased from others. One.

(1) Number of owned vessels operated by applicant (or predecessor in interest). None.

(2) Number of vessels under charter to applicant (or predecessor in interest). None.

(Answers to (1) and (2) should total answer (A).)

B. Number of vessels owned by applicant (or predecessor in interest) and under charter to others on January 1, 1940. One.

C. Total number of vessels in commission and operated by applicant (or predecessor in interest) as a common or contract carrier on date of this application, including vessels owned, chartered, or leased from others. One.

(1) Number of owned vessels operated by applicant (or predecessor in interest). One.

(2) Number of vessels under charter to applicant (or predecessor in interest). None.

(Answers to (1) and (2) should total answer (C).)

D. Number of vessels owned by applicant (or predecessor in interest) and under charter to others on date of this application. One.

IV. Dual Operations:

A. Is applicant (or predecessor in interest) controlled by a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a

contract carrier by water? No. If answer is "Yes," state name
(Yes or no)
and address of such person, and whether such person is applying for a common carrier certificate or contract carrier permit.

Was applicant (or predecessor in interest) so controlled on January 1, 1940? No.
(Yes or no)

B. Does applicant (or predecessor in interest) control a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a
840 contract carrier by water? No. If answer is "Yes," state
(Yes or no)
name and address of such person, and whether such person is applying for a common carrier certificate or contract carrier Permit.

Did applicant (or predecessor in interest) control such person on January 1, 1940? No.
(Yes or no)

C. Is applicant (or predecessor in interest) under common control with a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? Yes. If aswer is "Yes,"
(Yes or No)
state name and address of such person, and whether such person is applying for a common carrier certificate or contract carrier permit. Automotive Trades Steamship Company, 210 Wayne Street, Detroit, Michigan, which company is filing for certificate as common carrier. Was applicant (or predecessor in interest) under such common control on January 1, 1940? No.
(Yes or no)

Evidence of Operation:

A. Applicant submits the following evidence as proof of its operations (or those of predecessor in interest) as of January 1, 1940: See Affidavit of T. J. McCarthy, President, Exhibit B. W. C. "A" III.

(Applicant should list above the documents it is attaching in the form of affidavits, bills of lading, schedules, or other documents which it believes sufficiently prove the maintenance of service as stated.)

B. Applicant submits the following evidence as proof of its operations (or those of predecessor in interest) on the date of this application: See Affidavit of T. J. McCarthy, President, Exhibit B. W. C. "A" IV.

(Applicant should list above the documents it is attaching in the form of affidavits, bills of lading, schedules, or other documents

which it believes sufficiently prove the maintenance of service as stated.)

841 T. J. McCarthy Steamship Company's
Exhibit B. W. C. "A" I

Automobiles, passenger;
Chassis, commercial;
Chassis, freight automobile;
Chassis, passenger automobile;
Hearses, automobile;
Trailers, motor vehicle;
Trucks, panel or commercial delivery;
Trucks, motor vehicle;
Set up, on wheels.

T. J. McCarthy Steamship Company's
Exhibit B. W. C. "A" II

Automobiles, passenger;
Chassis, commercial;
Chassis, freight automobile;
Chassis, passenger automobile;
Hearses, automobile;
Trailers, motor vehicle;
Trucks, panel or commercial delivery;
Trucks, motor vehicle;
Set up, on wheels.

842 T. J. McCarthy Steamship Company's
Exhibit B. W. C. "A" III

State of Michigan,
County of Wayne, ss:

T. J. McCarthy, being duly sworn, deposes and says that he is, and has been since 1935, President of T. J. McCarthy Steamship Company, a Michigan corporation; that on the 18th day of February 1937, said T. J. McCarthy Steamship Company chartered to the Detroit & Cleveland Navigation Company its Steamer "George W. Mead" for the transportation of automobiles and motor vehicles on the Great Lakes, principally between Detroit and Lake Erie ports and between Lake Erie ports.

Deponent further says that the said charter contained on option under which the said charter might be renewed by the Detroit & Cleveland Navigation Company for the years 1938 through 1942, said option to be exercised on or before February 1 of each year; that the said option has been so exercised each year commencing

with 1938 to and including 1941; that under the said charter arrangement the T. J. McCarthy Steamship Company, as owner, was to pay all the expenses of fitout including the procuring of the vessel's certificate for service by the United States Local Inspectors of Steam Vessels. The owner likewise agreed to stand all expense in connection with establishing and marking the load line, and to pay any and all expenses of whatsoever nature in connection with laying up the ship at the end of the charter period. Further to pay any and all expense of any structural changes, alterations or betterments to machinery or equipment which might be ordered by the Steamboat Inspection Service or any governmental agency or which might be necessary to maintain and continue her classification.

That subsequently owner assumed a portion of the salaries
843 of the Licensed Dock and Engine Department personnel who were under union contracts and who ordinarily served for a period longer than the usual season of navigation.

That during the season of navigation of 1939 and 1940 the said Steamer "Mead" was operated on the routes between Detroit, Michigan, and Buffalo, New York, and Cleveland, Ohio, and between Buffalo, New York, and Cleveland, Ohio, and is now so operating.

Deponent further says that said T. J. McCarthy Steamship Company has had in effect with the Detroit & Cleveland Navigation Company a solicitation agreement for the solicitation for automobiles and motor vehicles for transportation between Detroit and Lake Erie ports since 1937.

Further Deponent saith not.

T. J. McCarthy.
T. J. McCarthy.

Subscribed and sworn to before me this 28th day of May A. D. 1941.

L. D. Traut,
L. D. Traut,
Notary Public, Wayne County, Michigan.

My Commission expires June 4, 1943.

844 T. J. McCarthy Steamship Company's Exhibit B. W. C.

"A" IV

State of Michigan,
County of Wayne, ss.

T. J. McCarthy, being duly sworn, deposes and says that he is the President of T. J. McCarthy Steamship Company, a Michigan corporation, and that the operations which are outlined in Exhibit

B. W. C. "A" III have continued since 1937 on the same basis as outlined in that affidavit and that the charter arrangement and solicitation agreement referred to therein are still in effect and that the company vessel is presently operating under that arrangement on the routes between Detroit, Michigan, and Lake Erie ports and between Lake Erie ports.

Further your Deponent saith not.

T. J. McCarthy.
T. J. McCarthy.

Subscribed and sworn to before me this 28th day of May A. D. 1941.

L. D. Traut,
L. D. Traut,
Notary Public, Wayne County, Michigan.

My Commission expires June 4, 1943.

845 *Plaintiffs' Exhibit No. 5*

WC.....

AMENDMENT TO ORIGINAL APPLICATION FOR ☒ CERTIFICATE AS COMMON CARRIER BY WATER

☐ PERMIT AS CONTRACT CARRIER BY WATER SUBJECT TO THE INTERSTATE COMMERCE ACT

(Before answering, read general instructions attached hereto)

Before the Interstate Commerce Commission

Application of T. J. McCarthy Steamship Company,
(Trade) (Trade Name)
a Michigan, corporation,

(Status as individual, partnership, association, corporation, fiduciary, etc. If a corporation, name the State of incorporation. If a partnership, give names and addresses of all partners. If an association or corporation, attach a list of names and addresses of directors and officers.)

210 Wayne Street, Detroit, Michigan
(Street address) (City) (State)

Application below is for the appropriate authority to (check applicable status):

☒ To continue an operation in existence January 1, 1940, and continuously thereafter as a ☒ common carrier or ☐ passengers.

☒ To continue an operation not existing January 1, 1940, but existing February 1, 1941, as a ☐ contract carrier of ☒ property. By water in interstate or foreign commerce (as defined in section 302 (i)).

Application for certificate as common carrier of property covers
☐ All commodities.
☐ Commodities with exceptions as detailed in Exhibits "A" or "B."

Application for a contract carrier permit of property covers
☐ All commodities with exceptions as detailed in Exhibits "A" or "B."
☒ Specific commodities as detailed in Exhibits "A" or "B" B. W. C. "B" I.

Application covers ☒ regular routes, ☒ irregular routes.
846 Operation is ☐ year around, ☒ seasonal between—varies due to ice conditions.

In support of this application, applicant submits the following exhibit attached hereto and made a part hereof:
☐ Exhibit "A". ☒ Exhibit "B". (See General Instructions.)

Applicant will furnish such additional information to substantiate the applicant's prayer as the Commission may require.

Applicant has complied with the order of the Commission relative to the service on interested parties, as shown below.

Applicant reserves the right to claim exemption from any and all provisions of Part III of the Interstate Commerce Act, the filing of this application not being deemed a waiver thereof, and the operations, if any, which applicant believes to be exempt are those described below:

(If exemption is claimed in respect of any operations applicant should here describe such operations, and in each instance make reference to the statutory provision or provisions under which the exemption is claimed.)

Exemption is claimed on bulk commodities except when transported with nonexempt commodities.

Wherefore, The applicant herein prays: That the Commission issue a Certificate (Certificate) (Permit) to operate as a common (Common Carrier) ——— of Property (Contract Carrier) (Passengers) (Property generally, or with exceptions, or specific commodities only, as detailed in Exhibits "A" or "B") B. W. C. "B" I and applicant further prays that if the facts herein contained show that applicant, although applying for a Certificate, (Certificate) (Permit) is entitled to a Permit (Permit) (Certificate) this application be considered one for the appropriate form of authority.

Dated this 16th day of October 1941.

T. J. McCarthy Steamship Company,
(Applicant)
By T. J. McCarthy, *President*.
(Title)

847 OATH

STATE OF MICHIGAN,
County of Wayne, ss:

T. J. McCarthy makes oath and says that he is the president of
(Name of affiant) (Title of affiant)
the T. J. McCarthy Steamship Company; that he is authorized on
(Name of applicant)
the part of said applicant to verify and file with the Interstate Commerce Commission this application and exhibits attached hereto and made a part hereof; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof; that he has knowledge of the matter set forth therein, and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

T. J. MCCARTHY.
T. J. McCarthy.

Subscribed and sworn to before me, a Notary Public in and for the State and county above named, this 16th day of October 1941.

[SEAL] L. D. TRAUT.
L. D. Traut.

My commission expires June 4, 1943.

CERTIFICATE OF SERVICE

A copy of this application has been served by receipted mail on the Governors of the following States: Michigan, Ohio, Pennsylvania, New York.

A notice of the filing of this application (Form B. W. C. 5) has been served by receipted mail on the following known waterline competitors: Detroit and Cleveland Navigation Company, Detroit and Cleveland Steamship Company, Great Lakes Transit Corporation, Minnesota-Atlantic Transit Company and Nicholson Universal Steamship Company.

Postal receipts or certificates of mailing covering the above are attached hereto.

Date October 16, 1941.

S. D. FOSTER.
(Signed) S. D. Foster.

848 EXHIBIT "A"

(This exhibit to be filled out by applicants for common carrier certificates or contract carrier permits claiming status under the provisos of section 309 (a) or 309 (f) of the Interstate Commerce Act.)

(Name of applicant)

Except as otherwise noted, the following information is to be as of January 1, 1940. The information given should, where necessary, cover a sufficient period prior to such date to give a clear and fair picture of the nature and extent of the business of applicant which properly should be covered by the certificate or permit sought. Wherever changes in the nature or extent of the operation have been made since January 1, 1940, they should be clearly indicated.

DESCRIPTION OF TRANSPORTATION SERVICE, ROUTES, PORTS SERVED REGULARLY AND IRREGULARLY, AND OTHER PERTINENT INFORMATION

I. Description of Transportation Service:

A. Applicant (or predecessor in interest) was engaged in the business of transporting, in interstate or foreign commerce:

(1) ☐ Commodities generally.

(2) ☐ Commodities generally, except _____
(Indicate exceptions, either specifically or by their general nature)

(3) ☐ Special commodities _____
(Indicate specifically commodities transported)

(4) ☐ Passengers.

B. Applicant (or predecessor in interest) undertook to transport passengers or property for the general public for hire. _____
(Yes or No)

If answer is "No," state for whom applicant (or predecessor in interest) transported since January 1, 1940, or prior thereto, under special contracts or agreements:

Name	*Address (street, city and state)*	*Written or verbal contract or agreement and date thereof*
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		

Comomdity covered	*Volume agreed to be transported*	*Duration of contract or agreement*
(1a)		
(2a)		
(3a)		
(4a)		
(5a)		
(6a)		

(NOTE: Lines (1a), (2a), (3a), etc. are a continuation respectively of the same contract referred to on lines (1), (2). (3), etc.)

849 EXHIBIT "B"

(This exhibit to be filled out by applicants for common carrier certificates or contract carrier permits who were in operation on February 1, 1941, but not claiming status under the provisos of section 309 (a) or 309 (f) of the Interstate Commerce Act)

T. J. McCarthy Steamship Company
(Name of applicant)

Except as otherwise noted, the following information is to be as of the date of filing application. The information given should, where necessary cover a sufficient period prior to such date to give a clear and fair picture of the nature and extent of the business of applicant which properly should be covered by the certificate or permit sought.

DESCRIPTION OF TRANSPORTATION SERVICE, ROUTES, PORTS SERVED REGULARLY AND IRREGULARLY, AND OTHER PERTINENT INFORMATION

I. Description of Transportation Service:

A. Applicant is engaged in the business of transporting, in interstate or foreign commerce:

(1) ☐ Commodities generally.

(2) ☐ Commodities generally, except _____
(Indicate exceptions, either specifically or by their general nature)

(3) ☐ Special commodities See Exhibit B. W. C. "B" I.
(Indicate specifically commodities transported)

(4) ☐ Passengers.

B. Applicant undertakes to transport passengers or property for the general public for hire. Yes. If answer is "No," state for (Yes or No)
whom applicant has transported under special contracts or agreements:

Name, Detroit and Cleveland Navigation Company; address (street, city and state), 210 Wayne Street, Detroit, Michigan; written or verbal contracts or agreement and date thereof, February 18, 1937, and renewed on February 1 each year thereafter, including 1941.

850 Commodity covered, (1a) See Exhibit B. W. C. (2a) "B" I; volume agreed to be transported, capacity of vessel during season; duration of contract or agreement, option for renewal through 1942.

(NOTE—Lines (1a), (2a), (3a), etc., are a continuation respectively of same contract referred to in lines (1), (2), (3), etc.)

C. Applicant is engaged in furnishing seasonal transportation only. Yes (Yes or No) If the answer is "Yes," state the limits of the seasonal operation naming month of commencement and month of cessation. Varies due to ice conditions.

If the above seasonal period does not include February 1, 1941, was applicant rendering above service during the seasonal period ending prior to that date? ---------- (Yes or No)

D. If applicant was not engaged in furnishing seasonal transportation, name date operation commenced.

II. Description of Routes:

A. Regular Routes: Ports or points to or from which applicant was regularly operating as of February 1, 1941, or prior thereto, and number of revenue calls at each between date operation commenced and date of application: Between Detroit, Michigan, and Cleveland, Ohio. Between Detroit, Michigan, and Buffalo, New York. Between Buffalo, New York, and Cleveland, Ohio. Number of revenue calls at each port via T. J. McCarthy Steamship Company from January 1, 1940 to date of original application (May 28, 1941) Cleveland, Ohio, 78; Buffalo, New York, 78; Detroit, Michigan, 51; and numerous trips to the same ports since May 28, 1941.

B. Irregular Routes: Ports or points to or from which applicant offered occasional but irregular service as of February 1, 1941, or prior thereto, and number of revenue calls at each between date operation commenced and date of application:

851 ---

C. If applicant is subject to Part III of the Interstate Commerce Act in transportation of passengers or property in interstate or foreign commerce only by reason of participation in through routes and joint rates, name carriers with whom such traffic is interchanged and interchange points:

III. Description of Equipment:

A. Total number of vessels in commission and operated by applicant as a common or contract carrier on February 1, 1941, including vessels owned, chartered, or leased from others. One.

(1) Number of owned vessels operated by applicant. One—Limited.

(2) Number of vessels under charter to applicant. None.

(Answers to (1) and (2) should total answer to (A))

B. Number of vessels owned by applicant and under charter to others on February 1, 1941. One—Limited.

C. Total number of vessels in commission and operated by applicant as a common or contract carrier on date of this application, including vessels owned, chartered, or leased from others. One.

(1) Number of owned vessels operated by applicant. One Limited.

(2) Number of vessels under charter to applicant. None.

(Answers to (1) and (2) should total answer to (C))

D. Number of vessels owned by applicant and under charter to others on date of this application. One—Limited.

852 IV. Dual Operations:

A. Is applicant controlled by a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? No.

(Yes or No)

If answer is "Yes," state name and address of such person, and whether such person is applying for a common carrier certificate or contract carrier permit.

B. Does applicant control a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? No. If

(Yes or No)

answer is "Yes," state name and address of such person, and whether such person is applying for a common carrier certificate or a contract carrier permit.

C. Is applicant under common control with a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? Yes. If answer is "Yes," state name and address of such

(Yes or No)

person, and whether such person is applying for a common carrier certificate or contract carrier permit. Automotive Trades Steamship Company.

V. Evidence of Operation:

A. Applicant submits the following evidence as proof of its operations as of February 1, 1941: See Affidavit of T. J. McCarthy, President. Exhibit B. W. C. "B" II.

(Applicant should list above the documents it is attaching in the form of affidavits, bills of lading, schedules, or other documents, which it believes sufficiently prove the maintenance of service as stated.)

B. Applicant submits the following evidence as proof of its operations on the date of this application: See Affidavit of T. J. McCarthy, President. Exhibit B. W. C. "B" III.

853 (Applicant should list above the documents it is attaching in the form of affidavits, bills of lading, schedules, or other documents, which it believes sufficiently prove the maintenance of service as stated.)

VI. Evidence of Qualifications:

A. Applicant for common carrier certificate submits the following evidence as proof that it is fit, willing, and able properly to perform the service proposed, and to conform to the provisions of Part III of the Interstate Commerce Act, and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent authority is sought, is or will be required by the present or future public convenience and necessity.

(Applicant should list the documents it is attaching hereto which it believes sufficiently prove that the operation for which the common carrier certificate is sought will meet the above requirements. The documents must include the following:)

(1) A statement of assets and liabilities, or if a newly organized corporation a statement of proposed capitalization and method of financing.

(2) If applicant has been in operation an income statement and profit and loss statement for the period of its operation; in the event the operation is such as to come under the Interstate Commerce Act, as amended, only in part, give a segregated profit and loss statement for such operation coming within the provisions of the Act, indicating the method of segregation.

(3) A statement containing brief description of the experience of the principal officers and operating personnel.

(4) An estimate of the available traffic and applicant's expected handling by classes of commodities or by number of passengers, and the prospective revenue and income from all traffic which applicant expects to handle.

(5) A statement of whether applicant's operation will be for the benefit of particular industries.

(6) A list of the known water carrier competitors now giving service between the ports which applicant proposes to serve.

As to (1) to (5) both inclusive, see Exhibit B. W. C. "B" IV.

(6) Nicholson Universal Steamship Company, Great Lakes Transit Corporation, Minnesota-Atlantic Transit Company.

854 B. Applicant for contract carrier permit submits the following evidence as proof that it is fit, willing and able properly to perform the service proposed and to conform to the provisions of Part III of the Interstate Commerce Act, and the

requirements, rules, and regulations of the Commission thereunder, and that such operation will be consistent with the public interest and the national transportation policy declared in the act.

(Applicant should list the documents it is attaching hereto which it believes sufficiently prove that the operation for which the contract carrier permit is sought will meet the above requirements.) The documents must include the following:

(1) A statement of assets and liabilities, or if a newly organized corporation, a statement of proposed capitalization and method of financing.

(2) If applicant has been in operation, an income statement and profit and loss statement for the period of its operation; in the event the operation is such as to come under the Interstate Commerce Act, as amended, only in part, give a segregated profit and loss statement for such operation coming within the provisions of the Act, indicating the method of segregation.

(3) A statement containing brief description of the experience of the principal officers and operating personnel.

(4) An estimate of the available traffic and applicant's expected handling by classes of commodities or by number of passengers, and the prospective revenue and income from all traffic which applicant expects to handle.

(5) A statement of whether applicant's operation will be for the benefit of particular industries.

(6) A list of the known water carrier competitors now giving service between the ports which applicant proposes to serve.

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855 T. J. McCarthy Steamship Company's Exhibit B. W. C. "B" I

Automobiles, passenger;
Chassis, commercial;
Chassis, freight automobile;
Chassis, passenger automobile;
Hearses, automobile;
Trailers, motor vehicle;
Trucks, panel or commercial delivery;
Trucks, motor vehicle;
Set up, on wheels.

856 T. J. McCarthy Steamship Company's Exhibit B. W. C. "B" H

State of Michigan,
County of Wayne, ss:

T. J. McCarthy, being duly sworn, deposes and says that he is and has been since 1935, President of T. J. McCarthy Steamship Company, a Michigan corporation; that on the 18th day of February, 1937, said T. J. McCarthy Steamship Company chartered to the Detroit & Cleveland Navigation Company its Steamer "George W. Mead" for the transportation of automobiles and motor vehicles on the Great Lakes, principally between Detroit and Lake Erie ports and between Lake Erie ports.

Deponent further says that the said charter contained an option under which the said charter might be renewed by the Detroit & Cleveland Navigation Company for the years 1938 through 1942, said option to be exercised on or before February 1 of each year; that the said option has been so exercised each year commencing with 1938 to and including 1941; that under the said charter arrangement the T. J. McCarthy Steamship Company, as owner, was to pay all the expenses of fitout including the procuring of the vessel's certificate for service by the United States Local Inspectors of Steam Vessels. The owner likewise agreed to stand all expense in connection with establishing and marking the load line, and to pay any and all expenses of whatsoever nature in connection with laying up the ship. Further to pay any and all expense of any structural changes, alterations or betterments to machinery or equipment which might be ordered by the Steamboat Inspection Service or any governmental agency or which might be necessary to maintain and continue her classification.

That subsequently owner under an agreement with charterer assumed a portion of the salaries of the Licensed Deck and Engine

Department personnel who were under union contracts and
857 who ordinarily served for a period longer than the usual season of navigation.

That during the season of navigation of 1939 and 1940 the said Steamer "Mead" was operated on the routes between Detroit, Michigan, and Buffalo, N. Y. and Cleveland, Ohio, and between Buffalo, New York, and Cleveland, Ohio, and is now so operating.

Dependent further says that said T. J. McCarthy Steamship Company has had in effect with the Detroit & Cleveland Navigation Company a solicitation agreement for the solicitation for automo

biles and motor vehicles for transportation between Detroit and Lake Erie ports since 1937.

Further Deponent saith not.

T. J. McCARTHY.
T. J. McCarthy.

Subscribed and sworn to before me this 16th day of October A. D. 1941.

L. D. TRAUT,
L. D. Traut,
Notary Public, Wayne County, Michigan.

My Commission expires June 4, 1943.

858 T. J. McCARTHY STEAMSHIP COMPANY'S EXHIBIT B. W. C. "B" III

STATE OF MICHIGAN,
County of Wayne, ss:

T. J. McCarthy, being duly sworn, deposes and says that he is the President of T. J. McCarthy Steamship Company, a Michigan corporation, and that the corporations which are outlined in Exhibit B. W. C. "B" II have continued since 1937 on the same basis as outlined in that affidavit and that the charter arrangement and solicitation agreement referred to therein are still in effect and that the company vessel is presently operating under that arrangement on the routes between Detroit, Michigan, and Lake Erie ports and between Lake Erie ports.

Further your Deponent saith not.

T. J. McCARTHY.
T. J. McCarthy.

Subscribed and sworn to before me this 16th day of October A. D. 1941.

L. D. TRAUT,
L. D. Traut,
Notary Public, Wayne County, Michigan.

My Commission expires June 4, 1943.

859 T. J. McCARTHY STEAMSHIP COMPANY'S EXHIBIT B. W. C. "B" IV

(2) Applicant has been in operation since 1936 and has attached its balance sheet as of September 30, 1941, and its income and expense statement covering the period from January 1, 1941, to September 30, 1941; (See Exhibit B. W. C. "B" V) that as applicant has not previously operated as a regulated carrier, it is not possible to make a segregation for such operation as comes within the pro-

vision of the Act. Quarterly reports are presently being filed with the Interstate Commerce Commission.

(3) Mr. T. J. McCarthy, President of T. J. McCarthy Steamship Company, has been engaged in the operation of vessels on the Great Lakes for approximately twenty years. He served in executive capacities with the original Nicholson Transit Company and the Nicholson Universal Steamship Company for about twelve years. He has been in charge of the automobile division of the Detroit & Cleveland Navigation Company since 1933 and President of Automotive Trades Steamship Company since its organization in 1936.

Mr. John P. Ramaban, Vice-President, was employed by the Nicholson Universal Steamship Company for a number of years and has been in charge of the eastern operations of applicant with headquarters in Buffalo, New York, since its organization and prior to that time in charge of the eastern operation of the T. J. McCarthy Steamship Company since its organization.

Mrs. Margaret M. Joynt, Secretary, is the daughter of Mr. T. J. McCarthy, President, and is connected with the Public School System of the City of Detroit.

Mr. Wm. J. Hoffman, Freight Traffic Manager, was for many years with the Traffic Department of Dodge Brothers Corporation and with the Nicholson Universal Steamship Company.

860 He has been associated with the T. J. McCarthy Steamship Company and with the Automotive Trades Steamship Company for the past six years.

(4) In the event Detroit and Cleveland Navigation Company should not charter the Steamer T. J. McCarthy, it is estimated that that vessel and her sister ship, the George H. Ingalls, will move during the season of 1942, upwards of 25,000 automobiles between Detroit and Lake Erie ports.

(5) The company's business will be primarily in the service of the automobile industry.

861 T. J. McCarthy Steamship Company
Exhibit B. W. C. "B" V

T. J. McCarthy Steamship Company, Balance Sheet, as at September 30, 1941

ASSETS

Current:		
Cash in Banks	$33,935.70	
Accounts Receivable—Trade	11,841.17	
Accounts Receivable—Lake Materials Corporation	3,343.50	
Accounts Receivable—Automotive Trades Steamship Co	7,844.41	
Materials and Supplies	1,544.65	
		$48,509.43

T. J. McCarthy Steamship Company, Balance Sheet, as at September 30, 1941—Continued

ASSETS

Current Assets—Fixed:			
Steamer "George W. Mead"	$75,000.00		
Reserve for Depreciation	25,833.19		
		$49,166.81	
Furniture and Fixtures	997.84		
Reserve for Depreciation	444.08		
		553.76	
Investment—Automotive Trades Steamship Co.		10,000.00	
			$59,720.57
Deferred Charges:			
Prepaid Rent		389.75	
Fit Out and Lay Up Expense		3,149.00	
			3,538.75
Total Assets			111,768.75

LIABILITIES AND NET WORTH

Current:			
Accounts Payable—Trade		$2,311.23	
Accounts Payable—T. J. McCarthy		55,529.38	
Total Current Liabilities			57,840.61
Fixed:			
Long-Term Note, T. J. McCarthy		10,846.58	
Dividend Notes Payable		9,000.00	
Interest thereon		2,160.00	
			22,006.58
Net Worth:			
Capital Stock Authorized and Issued	$10,000.00	10,000.00	
Surplus:			
Balance as of January 1, 1941	10,186.54		
Adjustments to September 30, 1941	277.58		
Net Income to September 30, 1941	11,457.44		
Balance September 30, 1941		21,921.56	
Net Worth			31,921.56
Total Liabilities and Net Worth			111,768.75

862 T. J. McCARTHY, STEAMSHIP COMPANY

Income and Expense Statement January 1, 1941 to September 30, 1941

Income:		
Revenue from Steamer "George W. Mead"	$5,155.35	
Commissions Earned	71,101.84	
Gross Operating Revenue		$76,257.19
Expense:		
Advertising	$365.30	
Insurance—General	298.00	
Janiter's Supplies and Expense	225.00	
Legal and Auditing	694.80	
Miscellaneous	382.96	

Income and Expense Statement January 1, 1941—Continued

Expense—Continued			
Office Supplies and Expense		$112.71	
Rent		310.00	
Sales Expense		3.19	
Taxes		386.31	
Telephone and Telegraph		247.20	
Traveling		131.71	
Life Insurance—Officers		919.40	
Tariff Printing		107.94	
Commission Expense		60,436.57	
Total Expense			$64,621.09
Net Operating Income			11,636.10
Other Income and Expense:			
Discounts Earned		$26.88	
Interest Expense	(Dr.)	205.54	
			178.66
Net Income			11,457.44

863 *Plaintiffs' Exhibit No. 6*

WC

MAY 31, '41 965410.

APPLICATION FOR

☒ CERTIFICATE AS COMMON CARRIER BY WATER

☐ PERMIT AS CONTRACT CARRIER BY WATER SUBJECT TO THE INTERSTATE COMMERCE ACT

(Before answering, read general instructions attached hereto)

Before the Interstate Commerce Commission

Application of Automotive Trades Steamship Company
(Name) (Trade Name)

a Delaware corporation.

(Status as individual, partnership, association, corporation, fiduciary, etc. If a corporation, name the State of incorporation. If a partnership, give names and addresses of all partners. If an association or corporation, attach a list of names and addresses of directors and officers.)

210 Wayne Street, Detroit 31, Michigan
(Street address) (City) (State)

Application below is for the appropriate authority to (check applicable status):

☒ To continue an operation in existence January 1, 1940, and continuously thereafter as a ☒ common carrier of ☐ passengers.

☐ To continue an operation not existing January 1, 1940, but existing February 1, 1941 as a ☐ contract carrier of ☒ property.

By water in interstate or foreign commerce (as defined in section 302 (i)).

Application for certificate as common carrier of property covers:

☐ All commodities.

☐ Commodities with exceptions as detailed in Exhibits "A" or "B".

Application for a contract carrier permit of property covers:

☐ All commodities with exceptions as detailed in Exhibits "A" or "B."

☒ Specific commodities as detailed in Exhibits "A" B. W. C. I.

Application covers ☒ regular routes, ☒ irregular routes.

BWC 2b.

864 Operation is ☐ year around, ☒ seasonal between—varies due to ice conditions.

In support of this application, applicant submits the following exhibit attached hereto and made a part hereof:

☒ Exhibit "A" ☐ Exhibit "B". (See General Instructions.)

Applicant will furnish such additional information to substantiate the applicant's prayer as the Commission may require.

Applicant has complied with the order of the Commission relative to the service on interested parties, as shown below.

Applicant reserves the right to claim exemption from any and all provisions of Part III of the Interstate Commerce Act, the filing of this application not being deemed a waiver thereof, and the operations, if any, which applicant believes be exempt are those described below:

(If exemption is claimed in respect of any operations applicant should here describe such operations, and in each instance make reference to the statutory provision or provisions under which the exemption is claimed.)

Exemption is claimed on bulk commodities except when transported with nonexempt commodities.

Wherefore, The applicant herein prays: That the Commission issue a Certificate to operate as a Common Carrier ---------- of Property ----------

(Certificate) (Permit) (Contract Carrier)

(Passengers) (Property generally, or with exceptions, or specific commodities only, as detailed in Exhibits "A" or "B")

B. W. C. "A" I, and applicant further prays that if the facts herein contained show that applicant, although applying for a Certificate, is entitled to a Permit, this application be considered one for the appropriate form of authority.

(Certificate) (Permit) (Permit) (Certificate),

Dated this 28th day of May 1941.

AUTOMOTIVE TRADES STEAMSHIP COMPANY,
(Applicant)

By T. J. MCCARTHY, *President*.
(Title)

865 OATH

STATE OF MICHIGAN,
County of Wayne, ss:

T. J. McCarthy makes oath and says that he is the President of
(Name of affiant) (Title of affiant)
the Automotive Trades Steamship Company; that he is author-
(Name of applicant)
ized on the part of said applicant to verify and file with the Interstate Commerce Commission this application and exhibits attached hereto and made a part hereof; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof; that he has knowledge of the matter set forth therein, and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

T. J. McCARTHY.

Subscribed and sworn to before me, a Notary Public in and for the State and county above named, this 28th day of May 1941.

[SEAL] L. D. TRAUT.

My commission expires June 4, 1943.

CERTIFICATE OF SERVICE

A copy of this application has been served by receipted mail on the Governors of the following States: Michigan, Minnesota, New York, Ohio, Pennsylvania.

A notice of the filing of this application (Form B. W. C. 5) has been served by receipted mail on the following known water-line competitors: Detroit and Cleveland Navigation Company, Detroit and Cleveland Steamship Company, Great Lakes Transit Corporation, Minnesota Atlantic Transit Company, and Nicholson Universal Steamship Company.

Postal receipts or certificates of mailing covering the above are attached hereto.

Date May 29th 1941.

(Signed) THOMAS L. LOTT.

866 EXHIBIT "A"

(This exhibit to be filled out by applicants for common carrier certificates or contract carrier permits claiming status under the provisos of section 309 (a) or 309 (f) of the Interstate Commerce Act.) Automotive Trades Steamship Company.
(Name of applicant)

Except as otherwise noted, the following information is to be as of January 1, 1940. The information given should, where neces-

ary, cover a sufficient period prior to such date to give a clear and air picture of the nature and extent of the business of applicant hich properly should be covered by the certificate or permit ought. Wherever changes in the nature or extent of the operation ave been made since January 1, 1940, they should be clearly indiated.

ESCRIPTION OF TRANSPORTATION SERVICE, ROUTES, PORTS SERVED REGULARLY AND IRREGULARLY, AND OTHER PERTINENT INFORMATION

. Description of Transportation Service:

A. Applicant (or predecessor in interest) was engaged in the usiness of transporting, in interstate or foreign commerce:

(1) ☐ Commodities generally.

(2) ☐ Commodities generally, except _____
(Indicate exceptions)
(Either specifically or by their general nature)

(3) ☒ Special commodities See Exhibit B. W. C. "A" I.
(Indicate specifically commodities transported)

(4) ☐ Passengers.

B. Applicant (or predecessor in interest) undertook to ransport passengers or property for the general public for ire. No. If answer is "No", state for whom applicant (or (Yes or No)
redecessor in interest) transported since January 1, 1940, or prior hereto, under special contracts or agreements:

Name, Detroit and Cleveland Navigation Company; address, street, city, and state), 210 Wayne Street, Detroit, Michigan; ritten or verbal contract or agreement and date thereof, February 18, 1937, March 30, 1940, and renewed including the year 1941. Commodity covered, See Exhibit B. W. C. "A" I; volume agreed o be transported, Capacity of vessels during season; duration of ontract or agreement, Option for renewal through 1942 on teamer "Morris S. Tremaine."

(NOTE: Lines (1a), 2a), (3a), etc. are a continuation respecvely of the same contract referred to on lines (1), (2), (3), etc.)

37 C. Applicant (or predecessor in interest) has continued to operate as above stated without any change in the transortation service as described above and is now so operating. No. If answer is "No," state in detail character and extent of (Yes or No)
uch change in service. Interrupted by ice conditions on Great akes.

D. If the changes indicated in the answer to (C) above represent interruptions of transportation service since January 1, 1940, caused by conditions over which applicant (or predecessor in interest) had no control, give facts and reasons clearly and in detail. No interruptions except due to ice conditions.

E. Applicant (or predecessor in interest) is engaged in furnishing seasonal transportation only. Yes. (Yes or No) If the answer is "Yes," state the limits of the seasonal operation, naming month of commencement and month of cessation. This varies due to ice conditions on Great Lakes.

If the above seasonal period does not include January 1, 1940, was applicant (or predecessor in interest) rendering above service during the seasonal period ending prior to that date? Yes. (Yes or No) Was applicant (or predecessor in interest) providing same service during seasonal period subsequent to January 1, 1940? Yes. (Yes or No) Outline fully any changes in character and extent of service between seasonal operation including, or prior to, January 1, 1940, and subsequent seasonal operation. No difference except ports may open or close earlier one year than another.

II. Description of Routes:

A. Regular Routes: Ports or points to or from which applicant (or predecessor in interest) regularly operated as of January 1, 1940, or prior thereto, and number of revenue calls at each between January 1, 1940, and date of application: Between Detroit, Michigan and Cleveland, Ohio; also between Detroit, Michigan and Buffalo, New York; also between Buffalo, New York and Cleveland, Ohio. Revenue trips: Cleveland, 117; Buffalo, 176; Detroit, 85.

B. Irregular Routes: Ports or points to or from which applicant (or predecessor in interest) offered occasional but irregular service as of January 1, 1940, or prior thereto, and number of
868 revenue calls at each between January 1, 1940, and date of application: Between Detroit, Michigan and Erie, Pennsylvania. No revenue calls made since January 1, 1940, to date of this application.

C. Has applicant (or predecessor in interest) acquired by purchase or otherwise a route or routes since January 1, 1940? No. (Yes or No) If so, attach statement, properly designated, giving, for each such route, the information requested in A and B above, also name and address of predecessor. Attach copy of purchase agreement, or other documents, evidencing the acquisition of each such route or routes.

D. Does applicant apply for rights over any route or routes perated by others under agreement? No. If so, attach state- (Yes or No)
ent, properly designated, giving, for each route, the information quested in A and B above, also name and address of operator. ttach copy of charter, operating contract, or other agreement.

E. Does applicant apply for rights over any route or routes er which it operates ships owned by others under charter, con- act, or other agreement? No. If so, attach statement, properly (Yes or No)
signated, giving, for each such route, the information requested A and B above, also name and address of the other party to ch charter, contract, or agreement. Attach copy of such charter, ntract, or agreement.

F. Has applicant (or predecessor in interest) abandoned or sposed of by sale or otherwise any route or routes since January 1940? No. If so, attach statement, properly designated, giv- (Yes or No)
g, for each such route, the information requested in A and B ove, the manner and date of disposition, and name and address successor, if any. Attach copy of the sales agreement or other cuments evidencing such disposal.

G. Were operations on any of the above routes or parts of such utes covered by answer to question C, D, E, or F seasonal? es. If so, attach statement, properly designated, giving facts es or No)
early and in detail, showing applicant's customary operation r that of predecessor in interest), including months of normal erating season.

H. If applicant (or predecessor in interest) is subject to Part I of the Interstate Commerce Act in transportation of pas- ngers or property in interstate or foreign commerce only by ason of participation in through routes and joint rates, name rriers with whom such traffic was interchanged as of January 1, 1940, or prior thereto, and interchange points: No.

State clearly any changes since January 1, 1940:

I. Description of Equipment:

A. Total number of vessels in commission and operated by plicant (or predecessor in interest) as a common or contract car- r on January 1, 1940, including vessels owned, chartered, or sed from others. Two.

(1) Number of owned vessels operated by applicant (or prede- ssor in interest). Two.

(2) Number of vessels under charter to applicant (or prede- ssor in interest) None.

nswers to (1) and (2) should total answer to (A).)

B. Number of vessels owned by applicant (or predecessor in interest) and under charter to others on January 1, 1940. Two.

C. Total number of vessels in commission and operated by applicant (or predecessor in interest) as a common or contract carrier on date of this application, including vessels owned, chartered, or leased from others. Two.

(1) Number of owned vessels operated by applicant (or predecessor in interest). Two.

(2) Number of vessels under charter to applicant (or predecessor in interest). None.

(Answers to (1) and (2) should total answers to (C).)

D. Number of vessels owned by applicant (or predecessor in interest) and under charter to others on date of this application. Two.

IV. Dual Operations:

A. Is applicant (or predecessor in interest) controlled by a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? No. If answer is "Yes," state name and address of such person, and whether such person is applying for a common carrier certificate or contract carrier permit. ---------

(Yes or No)

Was applicant (or predecessor in interest) so controlled on January 1, 1940? No.

(Yes or No)

B. Does applicant (or predecessor in interest) control a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? No. If answer is "Yes," state name and address of such person, and whether such person is applying for a common carrier certificate or contract carrier permit.

870

(Yes or No)

Did applicant (or predecessor in interest) control such person on January 1, 1940? No.

(Yes or No)

C. Is applicant (or precedessor in interest) under common control with a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? Yes. If the answer is "Yes," state name and address of such person, and whether such person is applying for a common carrier certificate or contract carrier permit. T. J. McCarthy Steamship Company, 210 Wayne Street, Detroit, Michigan, filing for Certificate as Common Carrier.

(Yes or No)

Was applicant (or predecessor in interest) under such common control on January 1, 1940? Yes.

(Yes or No)

Evidence of operation:

A. Applicant submits the following evidence as proof of its operations (or those of predecessor in interest) as of January 1, 1940: See affidavit of T. J. McCarthy, President. Exhibit B. W. C. "A" III.

(Applicant should list above the documents it is attaching in the form of affidavits, bills of lading, schedules, or other documents which it believes sufficiently prove the maintenance of service as stated.)

B. Applicant submits the following evidence as proof of its operations (or those predecessor in interest) on the date of this application: See Affidavit of T. J. McCarthy, President. Exhibit B. W. C. "A" IV.

(Applicant should list above the documents it is attaching in the form of affidavits, bills of lading, schedules, or other documents which it believes sufficiently prove the maintenance of service as stated.)

71 AUTOMOTIVE TRADES STEAMSHIP COMPANY'S EXHIBIT B. W. C. "A" I

Automobiles, passengers;
Chassis, commercial;
Chassis, freight automobiles;
Chassis, passenger automobiles;
Hearses, automobile;
Trailers, motor vehicle;
Trucks, panel or commercial delivery;
Trucks, motor vehicle;
Set up, on wheels.

AUTOMOTIVE TRADES STEAMSHIP COMPANY'S EXHIBIT B. W. C. "A" II

Automobiles, passengers;
Chassis, commercial;
Chassis, freight automobile;
Chassis, passenger automobile;
Hearses, automobile;
Trailers, motor vehicle;
Trucks, panel or commercial delivery;
Trucks, motor vehicle;
Set up, on wheels.

872 AUTOMOTIVE TRADES STEAMSHIP COMPANY'S EXHIBIT B. W. C. "A" III

STATE OF MICHIGAN,
County of Wayne, ss:

T. J. McCarthy, being duly sworn, deposes and says that he is, and has been since 1936, President of Automotive Trades Steamship Company, a Delaware corporation; that on the 18th day of February, 1937, said Automotive Trades Steamship Company chartered to the Detroit & Cleveland Navigation Company its Steamer "Morris S. Tremaine" and subsequently, and on the 30th day of March, 1940, its Steamer "George H. Ingalls" for the transportation of automobiles and motor vehicles on the Great Lakes, principally between Detroit and Lake Erie ports and between Lake Erie ports.

Deponent further says that the said charter on the Steamer "Morris S. Tremaine" contained an option under which the said charter might be renewed by the Detroit & Cleveland Navigation Company for the years 1938 through 1942, said option to be exercised on or before February 1 of each year; that the said option has been so exercised each year commencing with 1938 to and including 1941; that under the said charter arrangement the Automotive Trades Steamship Company, as owner, was to pay all the expenses of fitout including the procuring of the vessel's certificate for service by the United States Local Inspectors of Steam Vessels. The owner likewise agreed to stand all expense in connection with establishing and marking the load line, and to pay any and all expenses of whatsoever nature in connection with laying up the ship at the end of the charter period. Further to pay any and all expense of any structural changes, alterations or betterments to machinery or equipment which might be ordered by the Steamboat Inspection service or any governmental agency or which might be necessary to maintain and continue her classification.

873 That subsequently owner assumed a portion of the salaries of the Licensed Deck and Engine Department personnel who were under union contracts and who ordinarily served for a period longer than the usual season of navigation.

That during the season of navigation of 1939 and 1940 the said Steamers "Morris S. Tremaine" and "George H. Ingalls" were operated on the routes between Detroit, Michigan, and Buffalo, New York, and Cleveland, Ohio, and between Buffalo, New York, and Cleveland, Ohio, and are now so operating.

Further Deponent saith not.

T. J. McCARTHY.

T. J. McCarthy.

Subscribed and sworn to before me this 28th day of May A. D. 1941.

L. D. TRAUT,
L. D. Traut,
Notary Public, Wayne County, Michigan.

My Commission expires June 4, 1943.

874 AUTOMOTIVE TRADES STEAMSHIP COMPANY'S EXHIBIT B. W. C. "A" IV

STATE OF MICHIGAN,
County of Wayne, ss:

T. J. McCarthy, being duly sworn, deposes and says that he is the President of Automotive Trades Steamship Company, a Delaware corporation, and that the operations which are outlined in Exhibit B. W. C. "A" III have continued since 1937 on the same basis as outlined in that affidavit and that the charter arrangement and solicitation agreement referred to therein are still in effect and that the company vessel is presently operating under that arrangement on the routes between Detroit, Michigan, and Lake Erie ports and between Lake Erie ports.

Further your Deponent saith not.

T. J. MCCARTHY.
T. J. McCarthy.

Subscribed and sworn to before me this 28th day of May A. D. 1941.

L. D. TRAUT,
L. D. Traut,
Notary Public, Wayne County, Michigan.

My Commission expires June 4, 1943.

875 *Plaintiffs' Exhibit No. 7*

Form B. W. C. 2 WC 729

AMENDMENT TO ORIGINAL APPLICATION FOR ☒ CERTIFICATE AS COMMON CARRIER BY WATER ☐ PERMIT AS CONTRACT CARRIER BY WATER SUBJECT TO THE INTERSTATE COMMERCE ACT

(Before answering, read general instructions attached hereto)

Before the Interstate Commerce Commission

Application of Automotive Trades Steamship Company, a Delaware Corporation.
(Name) (Trade Name)

(Status as individual, partnership, association, corporation, fiduciary, etc. If a corporation, name the State of incorporation. If a partnership, give names and addresses of all partners. If an association or corporation, attach a list of names and addresses of directors and officers.)

210 Wayne Street, Detroit, Michigan, P. O. Box 1117.
(Street Address) (City) (State)

Application below is for the appropriate authority to (check applicable status):

☒ To continue an operation in existence January 1, 1940, and continuously thereafter as a ☒ common carrier of ☐ passengers.

☒ To continue an operation not existing January 1, 1940, but existing February 1, 1941, as a ☐ contract carrier of ☒ property. by water in interstate or foreign commerce (as defined in section 302 (i)).

Application for certificate as common carrier of property covers.

☐ All commodities.

☐ Commodities with exceptions as detailed in Exhibits "A" or "B."

Application for a contract carrier permit of property covers

☐ All commodities with exceptions as detailed in Exhibits "A" or "B."

☒ Specific commodities as detailed in Exhibits "A" or "B"

B. W. C. "B" I.

Application covers ☒ regular routes ☒ irregular routes.

876 Operations is ☐ year around, ☒ seasonal between—varies due to ice conditions.

In support of this application, applicant submits the following exhibit attached hereto and made a part hereof:

☐ Exhibit "A." ☒ Exhibit "B." (See General Instructions.)

Applicant will furnish such additional information to substantiate the applicant's prayer as the Commission may require.

Applicant has complied with the order of the Commission relative to the service on interested parties, as shown below.

Applicant reserves the right to claim exemption from any and all provisions of Part III of the Interstate Commerce Act, the filing of this application not being deemed a waiver thereof, and the operations, if any, which applicant believes to be exempt are those described below:

(If exemption is claimed in respect of any operations applicant should here describe such operations, and in each instance make reference to the statutory provision or provisions under which the exemption is claimed.)

Exemption is claimed on bulk commodities except when transported with nonexempt commodities.

Wherefore, The applicant herein prays: That the Commission issue a Certificate to operate as a Common _____
(Certificate) (Permit) (Common Carrier)
of _____ Property B. W. C. "B" I
(Contract Carrier) (Passengers) (Property generally, or with exceptions, or specific commodities only, as detailed in Exhibits "A" or "B").
and applicant further prays that if the facts herein contained show that applicant, although applying for a Certificate, is entitled to a Permit this application be considered one for the appro-
(Certificate) (Permit) (Permit) (Certificate)
priate form of authority.

Dated this 16th day of October 1941.

AUTOMOTIVE TRADES STEAMSHIP COMPANY,
(Applicant)
T. J. McCARTHY,
By T. J. McCarthy,
President.
(Title)

877

OATH

STATE OF MICHIGAN,
County of Wayne, ss:

T. J. McCarthy makes oath and says that he is the President of
(Name of affiant) (Title of affiant)
the Automotive Trades Steamship Company; that he is authorized
(Name of applicant)
on the part of said applicant to verify and file with the Interstate Commerce Commission this application and exhibits attached hereto and made a part hereof; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof; that he has knowledge of the matter set forth therein, and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

T. J. McCARTHY.
T. J. McCarthy.

Subscribed and sworn to before me, a Notary Public in and for the State and county above named, this 16th day of October 1941.

[SEAL]

L. D. TRAUT.
L. D. Traut.

My commission expires June 4, 1943.

CERTIFICATE OF SERVICE

A copy of this application has been served by receipted mail on the Governors of the following States: Michigan, New York, Ohio, Pennsylvania.

A notice of the filing of this application (Form B. W. C. 5) has been served by receipted mail on the following known water-line competitors:

Detroit and Cleveland Navigation Company, Great Lakes Transit Corporation, Minnesota-Atlantic Transit Company, Nicholson Universal Steamship Company.

Postal receipts or certificates of mailing covering the above are attached hereto.

Date October 16, 1941.

S. D. FOSTER.
(Signed) S. D. Foster.

878 EXHIBIT "A"

(This exhibit to be filled out by applicants for common carrier certificates or contract carrier permits claiming status under the provisos of section 309 (a) or 209 (f) of the Interstate Commerce Act.)

(Name of Applicant)

Except as otherwise noted, the following information is to be as of January 1, 1940. The information given should, where necessary, cover a sufficient period prior to such date to give a clear and fair picture of the nature and extent of the business of applicant which properly should be covered by the certificate or permit sought. Wherever changes in the nature or extent of the operation have been made since January 1, 1940, they should be clearly indicated.

DESCRIPTION OF TRANSPORTATION SERVICE, ROUTES, PORTS SERVED REGULARLY AND IRREGULARLY, AND OTHER PERTINENT INFORMATION

I. Description of Transportation Service:

A. Applicant (or predecessor in interest) was engaged in the business of transporting, in interstate or foreign commerce:

(1) ☐ Commodities generally.

(2) ☐ Commodities generally, except _____
(Indicate exception, either specifically or by their general nature)

(3) ☐ Special commodities _____
(Indicate specifically commodities transported)

(4) ☐ Passengers.

B. Applicant (or predecessor in interest) undertook to transport passengers or property for the general public for hire. _____. If answer is "No", state for whom applicant (or
(Yes or No)

predecessor in interest) transported since January 1, 1940, or prior thereto, under special contracts or agreements:

	Name	Address (street, city, and State)	Written or verbal contract or agreement and date thereof
(1)			
(2)			
(3)			
(4)			
(5)			
(6)			

	Commodity covered	Volume agreed to be transported	Duration of contract or agreement
(1a)			
(2a)			
(3a)			
(4a)			
(5a)			
(6a)			

(NOTE: Lines (1a), (2a), (3a), etc. are a continuation respectively of the same contract referred to on lines (1), (2), (3), etc.)

879

EXHIBIT "B"

(This exhibit to be filed out by applicants for common carrier certificates or contract carrier permits who were in operation on February 1, 1941, but not claiming status under the provisos of section 309 (a) or 309 (f) of the Interstate Commerce Act)

Automotive Trades Steamship Company.
(Name of Applicant)

Except as otherwise noted, the following information is to be as of the date of filing application. The information given should, where necessary, cover a sufficient period prior to such date to give a clear and fair picture of the nature and extent of the business of applicant which properly should be covered by the certificate or permit sought.

DESCRIPTION OF TRANSPORTATION SERVICE, ROUTES, PORTS SERVED REGULARLY AND IRREGULARLY, AND OTHER PERTINENT INFORMATION

I. Description of Transportation Service:

A. Applicant is engaged in the business of transporting, in interstate or foreign commerce:

(1) ☐ Commodities generally.
(2) ☐ Commodities generally, except _____
(Indicate exceptions, either specifically or by their general nature)
(3) ☒ Special commodities. See Exhibit B. W. C. "B" I.
(Indicate specifically commodities transported)
(4) ☐ Passengers.

B. Applicant undertakes to transport passengers or property for the general public for hire. Yes. If answer is "No", state (Yes or No)
for whom applicant has transported under special contracts or agreements:

Name, Detroit and Cleveland Navigation Company; address (street, city, and State), 210 Wayne Street, Detroit, Michigan; written or verbal contracts or agreement and date thereof, February 18, 1937, March 30, 1940, renewed, including year 1941.

880 — Commodity covered, See Exhibit B. W. C. "B" I; volume agreed to be transported, capacity of vessels during season; duration of contract or agreement, option for renewal through 1942 on Steamer "T. J. McCarthy," nee "Morris S. Tremaine," Steamer "George H. Ingalls" for season of 1941. No option to renew.

(NOTE.—Lines (1a), (2a), (3a), etc., are a continuation respectively of same contract referred to in lines (1), (2), (3), etc.).

C. Applicant is engaged in furnishing seasonal transportation only. Yes. If the answer is "Yes," state the limits of the seasonal (Yes or No)
operation, naming month of commencement and month of cessation. This varies due to ice conditions.

If the above seasonal period does not include February 1, 1941, was applicant rendering above service during the seasonal period ending prior to that date? Yes.
(Yes or No)

D. If applicant was not engaged in furnishing seasonal transportation, name date operation commenced.

II. Description of Routes:

A. Regular Routes: Ports or points to or from which applicant was regularly operating as of February 1, 1941, or prior thereto, and number of revenue calls at each between date operation commenced and date of application: Between Detroit, Michigan and Cleveland, Ohio. Between Detroit, Michigan, and Buffalo, New York. Between Buffalo, New York, and Cleveland, Ohio. Revenue trips from January 1, 1940, to date of original application (May 28, 1941) Cleveland, Ohio, 117; Buffalo, New York, 176; Detroit, Michigan, 85; and numerous trips to the several ports since May 28, 1941.

B. Irregular Routes: Ports or points to or from which applicant offered occasional but irregular service as of February 1, 1941, or prior thereto, and number of revenue calls at each between date operation commenced and date of application:

881 Between Detroit, Michigan, and Erie, Pennsylvania. (No revenue calls made since January 1, 1940.)

C. If applicant is subject to Part III of the Interstate Commerce Act in transportation of passengers or property in interstate or foreign commerce only by reason of participation in through routes and joint rates, name carriers with whom such traffic is interchanged and interchange points:

III. Description of Equipment:

A. Total number of vessels in commission and operated by applicant as a common or contract carrier on February 1, 1941, including vessels owned, chartered, or leased from others. Two.

(1) Number of owned vessels operated by applicant. One—Limited.

(2) Number of vessels under charter to applicant. None.

(Answers to (1) and (2) should total answer to (A).)

B. Number of vessels owned by applicant and under charter to others on February 1, 1941. One—Limited.

C. Total number of vessels in commission and operated by applicant as a common or contract carrier on date of this application, including vessels owned, chartered, or leased from others. Two.

(1) Number of owned vessels operated by applicant. One.

(2) Number of vessels under charter to applicant. None.

(Answers to (1) and (2) should total answer to (C).)

D. Number of vessels owned by applicant and under charter to others on date of this application. Two—Limited.

882 IV. Dual Operations:

A. Is applicant controlled by a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? No.

(Yes or No)

If answer is "Yes," state name and address of such person, and whether such person is applying for a common carrier certificate or a contract carrier permit.

B. Does applicant control a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? No. If answer is "Yes," state name and address of such person, and whether such person is applying for a common carrier certificate or a contract carrier permit.

(Yes or No)

C. Is applicant under common control with a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? Yes. If answer is "Yes," state name and address of (Yes or No)
such person, and whether such person is applying for a common carrier certificate or contract carrier permit. T. J. McCarthy Steamship Company.

V. Evidence of Operation:

A. Applicant submits the following evidence as proof of its operations as of February 1, 1941: See Affidavit of T. J. McCarthy, President. Exhibit B, W. C. "B" II.

(Applicant should list above the documents it is attaching in the form of affidavits, bills of lading, schedules, or other documents, which it believes sufficiently prove the maintenance of service as stated.)

B. Applicant submits the following evidence as proof of its operations on the date of this application: See Affidavit of T. J. McCarthy, President. Exhibit B. W. C. "B" III.

883 (Applicant should list above the documents it is attaching in the form of affidavits, bills of lading, schedules, or other documents, which it believes sufficiently prove the maintenance of service as stated.)

VI. Evidence of Qualifications:

A. Applicant for common carrier certificate submits the following evidence as proof that it is fit, willing, and able properly to perform the service proposed, and to conform to the provisions of Part III of the Interstate Commerce Act, and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent authority is sought, is or will be required by the present or future public convenience and necessity.

(Applicant should list the documents it is attaching hereto which it believes sufficiently prove that the operation for which the common carrier certificate is sought will meet the above requirements. The documents must include the following:)

(1) A statement of assets and liabilities, or if a newly organized corporation, a statement of proposed capitalization and method of financing.

(2) If applicant has been in operation, an income statement and profit and loss statement for the period of its operation; in the event the operation is such as to come under the Interstate Commerce Act, as amended, only in part, give a segregated profit and loss statement for such operation coming within the provisions of the Act, indicating the method of segregation.

(3) A statement containing brief description of the experience of the principal officers and operating personnel.

(4) An estimate of the available traffic and applicant's expected handling by classes of commodities or by number of passengers, and the prospective revenue and income from all traffic which applicant expects to handle.

(5) A statement of whether applicant's operation will be for the benefit of particular industries.

(6) A list of the known water carrier competitors now giving service between the ports which applicant proposes to serve.

As to (1) to (5), both inclusive, see Exhibit B. W. C. "B" IV (6) Nicholson University Steamship Company, Great Lakes Transit Corporation, Minnesota-Atlantic Transit Company.

884 B. Applicant for contract carrier permit submits the following evidence as proof that it is fit, willing, and able properly to perform the service proposed and to conform to the provisions of Part III of the Interstate Commerce Act, and the requirements, rules, and regulations of the Commission thereunder, and that such operation will be consistent with the public interest and the national transportation policy declared in the act.

(Applicant should list the documents it is attaching hereto which it believes sufficiently prove that the operation for which the contract carrier permit is sought will meet the above requirements. The documents must include the following:)

(1) A statement of assets and liabilities, or if a newly organized corporation a statement of proposed capitalization and method of financing.

(2) If applicant has been in operation an income statement and profit and loss statement for the period of its operation; in the event the operation is such as to come under the Interstate Commerce Act, as amended, only in part, give a segregated profit and loss statement for such operation coming within the provisions of the Act, indicating the method of segregation.

(3) A statement containing brief description of the experience of the principal officers and operating personnel.

(4) An estimate of the available traffic and applicant's expected handling by classes of commodities or by number of passengers, and the prospective revenue and income from all traffic which applicant expects to handle.

(5) A statement of whether applicant's operation will be for the benefit of particular industries.

(6) A list of the known water carrier competitors now giving service between the ports which applicant proposes to serve.

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885 AUTOMOTIVE TRADES STEAMSHIP COMPANY'S EXHIBIT B. W. C. "B"

Automobiles, passenger;
Chassis, commercial;
Chassis, freight automobile;
Chassis, passenger automobile;
Hearses, automobile;
Trailers, motor vehicle;
Trucks, panel or commercial delivery;
Trucks, motor vehicle;
Set up, on wheels.

886 AUTOMOTIVE TRADES STEAMSHIP COMPANY'S EXHIBIT B. W. C. "B" II

STATE OF MICHIGAN,
County of Wayne:ss:

T. J. McCarthy, being duly sworn, deposes and says that he is, and has been since 1936, President of Automotive Trades Steamship Company, a Delaware corporation; that on the 18th day of February 1937, said Automotive Trades Steamship Company chartered to the Detroit & Cleveland Navigation Company its steamer "T. J. McCarthy" nee "Morris S. Tremaine" and subsequently and on the 30th day of March 1940, its Steamer "George H. Ingalls" for the transportation of automobiles and motor vehicles on the Great Lakes, principally between Detroit and Lake Erie ports and between Lake Erie ports.

Deponent further says that the said charter on the Steamer "T. J. McCarthy" nee "Morris S. Tremaine" contained an option under which the said charter might be renewed by the Detroit & Cleveland Navigation Company for the years 1938 through 1942, said option to be exercised on or before February 1 of each year; that the said option has been so exercised each year commencing with 1938 to and including 1941; that under the said charter arrangement the Automotive Trades Steamship Company, as owner, was to pay all the expenses of fitout including the procuring of the vessel's certificate for service by the United States Local Inspectors of Steam Vessels. The owner likewise agreed to stand all expense in connection with establishing and marking the load line, and to pay any and all expenses of whatsoever nature in connection with laying up the ship. Further, to pay any and all expense of any structural changes, alterations or betterments to machinery or equipment which might be ordered by the Steamboat Inspection service or any governmental agency or which might be necessary to maintain and continue her classification.

887 That subsequently owner under an agreement with charterer assumed a portion of the salaries of the Licensed Deck and Engine Department personnel who were under union contracts and who ordinarily served for a period longer than the usual season of navigation.

That during the season of navigation of 1939 and 1940 the said Steamers "T. J. McCarthy" nee "Morris S. Tremaine" and "George H. Ingalls" were operated on the routes between Detroit, Michigan, and Buffalo, New York, and Cleveland, Ohio, and between Buffalo, New York ,and Cleveland, Ohio, and are now so operating.

Further Deponent saith not.

T. J. McCarthy.
T. J. McCarthy.

Subscribed and sworn to before me this 16th day of October A. D. 1941.

L. D. Traut,
L. D. Traut,
Notary Public, Wayne County, Michigan.

My Commission expires June 4, 1943.

888 AUTOMOTIVE TRADES STEAMSHIP COMPANY'S EXHIBIT B. W. C. "B" III

STATE OF MICHIGAN,
County of Wayne, ss.

T. J. McCarthy, being duly sworn, deposes and says that he is the President of T. J. McCarthy Steamship Company, a Michigan corporation, and that the operations which are outlined in Exhibit B. W. C. "B" II have continued since 1937 on the same basis as outlined in that affidavit and that the charter arrangement and solicitation agreement referred to therein are still in effect and that the company vessel is presently operating under that arrangement on the routes between Detroit, Michigan, and Lake Erie ports and between Lake Erie ports.

Further your Deponent saith not.

T. J. McCarthy.
T. J. McCarthy.

Subscribed and sworn to before me this 16th day of October A. D. 1941.

L. D. Traut,
L. D. Traut,
Notary Public, Wayne County, Michigan.

My Commission expires June 4, 1943.

88 AUTOMOTIVE TRADES STEAMSHIP COMPANY'S
EXHIBIT B. W. C. "B" IV

(2) Applicant has been in operation since 1936 and has attached its balance sheet as of September 30, 1941, and its income and expense statement covering the period from January 1, 1941, to September 30, 1941 (see Exhibit B. W. C. "B" V), that as applicant has not previously operated as a regulated carrier, it is not possible to make a segregation for such operation as comes within the provision of the Act. Quarterly reports are presently being filed with the Interstate Commerce Commission.

(3) Mr. T. J. McCarthy, President of Automotive Trades Steamship Company, has been engaged in the operation of vessels on the Great Lakes for approximately twenty years. He served in executive capacities with the original Nicholson Transit Company and the Nicholson Universal Steamship Company for about twelve years. He has been in charge of the automobile division of the Detroit & Cleveland Navigation Company since 1933 and President of Automotive Trades Steamship Company since its organization in 1936.

Mr. John P. Ranahan, Vice President, was employed by the Nicholson Universal Steamship Company for a number of years and has been in charge of the eastern operations of applicant with headquarters in Buffalo, New York, since its organization and prior to that time in charge of the eastern operation of the T. J. McCarthy Steamship Company since its organization.

Mrs. Margaret M. Joynt, Secretary, is the daughter of Mr. T. J. McCarthy, President, and is connected with the Public School System of the City of Detroit.

Mr. Wm. J. Hoffman, Freight Traffic Manager, was for many years with the Traffic Department of Dodge Brothers Corporation and with the Nicholson Universal Steamship Company.
890 He has been associated with the T. J. McCarthy Steamship Company and with the Automotive Trades Steamship Company for the past six years.

(4) In the event Detroit and Cleveland Navigation Company should not charter the Steamer "T. J. McCarthy," it is estimated that that vessel and her sister ship, the "George H. Ingalls," will move during the season of 1942 upwards of 50,000 automobiles between Detroit and Lake Erie ports.

(5) The company's business will be primarily in the service of the automobile industry.

891 AUTOMOTIVE TRADES STEAMSHIP COMPANY EXHIBIT
B. W. C. "B" V

Automotive Trades Steamship Company Balance Sheet as at September 30, 1941

ASSETS			
Current:			
Cash on Hand and in Bank		$15,983.27	
Accounts Receivable—Trade		524.03	
Accounts Receivable—Sundry		173.04	
Inventory—Materials and Supplies		354.90	
Total Current Assets			$17,035.24
Fixed:			
Steamer "George H. Ingalls"	$83,880.09		
Reserve for Depreciation	20,994.24		
		$62,385.85	
Steamer "Morris S. Tremaine"	79,586.13		
Reserve for Depreciation	26,925.61		
		52,660.52	
Small Tools, Equipment, etc.		197.78	
Total Fixed Assets			115,744.15
Deferred Charges:			
Fit Out and Lay Up Expense—Deferred			1,420.81
Total Assets			134,200.20
LIABILITIES AND NET WORTH			
Current:			
Accounts Payable—Trade		$1,110.72	
Federal Taxes Payable		477.30	
T. J. McCarthy		2,815.70	
J. P. Ranahan		2,730.00	
T. J. McCarthy Steamship Company		7,844.41	
Total Current Liabilities			$14,978.13
Long-Term Note Payable—Manufacturers National Bank			16,000.00
Total Liabilities			30,978.13
Net Worth:			
Capital Stock:			
$1.00 Par Value Authorized	$100,000.00		
Unissued	55,080.00		
Capital Stock Outstanding		$44,920.00	
Surplus: Balance—January 1, 1941	46,288.19		
Adjustments to September 30 1941 (Dr)	1,976.89		
Net Income	13,900.77		
Balance September 30, 1941		58,302.07	
Net Worth			103,222.07
			134,200.20

892 AUTOMOTIVE TRADES STEAMSHIP COMPANY

Income and expense statement, January 1, 1941, to September 30, 1941

Income:		
Steamship revenues:		
S. S. "George H. Ingalls"	$21,375.93	
S. S. "Morris S. Tremaine"	6,791.67	
Miscellaneous revenue	120.00	
Gross operating income		$28,287.60
Expense:		
Advertising	$239.50	
Executive salaries	3,270.00	
Insurance—general	327.76	
Janitor's supplies and expense	45.00	
Legal and auditing	1,040.00	
Miscellaneous	521.62	
Office salaries	1,800.00	
Office supplies and expense	101.81	
Rent	410.00	
Sales expense	22.33	
Sales salaries	1,800.00	
Taxes	890.70	
Telephone and telegraph	862.01	
Travel expense	75.00	
Tariff printing	156.89	
Life insurance—officers	1,708.20	
Total expense		13,370.82
Net operating income		14,916.78
Other income and expense:		
Discounts earned	$29.84	
Interest expense (Dr.)	955.85	
		926.01
Net income		13,990.77

893 Supreme Court of the United States

Statement of points intended to be relied upon by appellants and designation of record to be printed

Filed Feb. 7, 1945

The United States of America, Interstate Commerce Commission, T. J. McCarthy Steamship Company, and Automotive Trades Steamship Company, appellants in the above-entitled case, both in brief and oral argument will rely upon the ponts set forth in their assignment of errors heretofore filed.

Appellants designate to be printed as necessary for consideration of their appeal, all the record in this case heretofore docketed with this Court.

CHARLES FAHY,
Solicitor General,
WENDELL BERGE,
Assistant Attorney General,
For United States of America.
DANIEL W. KNOWLTON,
Chief Counsel,
DANIEL H. KUNKEL,
Attorney,
GORDON C. LOCKE,
Attorney,
For Interstate Commerce Commission.
SPARKMAN D. FOSTER,
Attorney,
For T. J. McCarthy Steamship Company and Automotive Trades Steamship Company.

AFFIDAVIT OF SERVICE

I hereby certify that I served a copy of the attached statement of points intended to be relied upon by appellants, and designation of record by appellants, upon each of the following counsel, this 6th day of February 1945 by mailing them a copy thereof: Willis C. Bullard, 2104 Dime Building, Detroit, Michigan; S. S. Eisen, 140 Cedar Street, New York, N. Y.; Frank W. Sullivan, 231 South La Salle Street, Chicago, Ill.; Ernest S. Ballard, 120 South La Salle Street, Chicago, Ill.

[File endorsement omitted.]

894 Supreme Court of the United States

Order noting probable jurisdiction

February 26, 1945

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[Endorsement on cover:] File No. 49330. D. C. U. S., Eastern Michigan. Term No. 877. The United States of America, Interstate Commerce Commission, T. J. McCarthy Steamship Company and Automotive Trades Steamship Company, Appellants vs. Detroit and Cleveland Navigation Company, Great Lakes Transit Company and Nicholson Universal Steamship Company. Filed January 27, 1945. Term No. 877 O. T. 1944.

U. S. GOVERNMENT PRINTING OFFICE: 1945